

United States Bankruptcy Court, Northern District of California

Fill in this information to identify the case (Select only one Debtor per claim form):

☐ PG&E Corporation (19-30088)

☒ Pacific Gas and Electric Company (19-30089)

Official Form 410

Proof of Claim

04/16

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Unless an exception in the Bar Date Order applies to you, you should not use this form to submit a claim that arises out of or relates to the fires that occurred in Northern California prior to January 29, 2019.

Part 1: Identify the Claim

1. **Who is the current creditor?**

HUDSON SKYPORT PLAZA, LLC, a Delaware limited liability company; HUDSON SKYPORT PLAZA LAND, LLC, a Delaware limited liability company and HUDSON PACIFIC PROPERTIES, INC., a Maryland corporation

Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?**

☒ No

☐ Yes. From whom?

3. Where should notices and payments to the creditor be sent?

Where should notices to the creditor be sent?

Where should payments to the creditor be sent? (if different)

Federal Rule of
Bankruptcy Procedure
(FRBP) 2002(g)

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 ÄjÄj Äj [] ä/Äj LPWOÜP/ÄSYÜÜVÄ/ÄSZÖZÖFSSÖFÖ/Äj
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 ÜCÖCÖÄÜÜÜÜCÖCÖFSSÖFÖ/Äj ä/ÄjÄj [] []Äj }
 c/o Binder & Malter, LLP.Ä
 2775 Park Ave.
 Santa Clara Ca 95050ÄAtten:
 Robert Harris

PWOUUPAUSYUUUVAUSOZCPSOÖAÖA
 & { } æ LPWOUUPAUSYUUUVAUSOZCPSOÖAÖA
 ÖAÖA æ AÄ ä ä ä ä ä ä ä & { } æ Ä ä PWOUUPAUCÖÖA
 UUUUÖUÖUÖÄNC., a Maryland corporation

11601 Wilshire Blvd., 9th Floor
Los Angeles, CA 90025

Contact phone 408-295-1700

Contact email **rob@bindermalter.com**

Contact phone _____

Contact email

4. Does this claim amend one already filed?

☒ No

☐ Yes. Claim number on court claims registry (if known) _____

Filed on _____

MM / DD / YYYY

5. Do you know if anyone else has filed a proof of claim for this claim?

☒ No

☐ Yes. Who made the earlier filing?

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? ☒ No
☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____

7. How much is the claim? \$ Unliquidated. Does this amount include interest or other charges?
☒ No
☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim?
Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or creditcard.
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
Limit disclosing information that is entitled to privacy, such as health care information.
Contribution and indemnity in connection with claims asserted against claimant in connection with Case no. 17-cv-03579, Mendoza v. City of San Jose et al, U.S. District Court, N. California, San Jose Division

9. Is all or part of the claim secured? ☒ No
☐ Yes. The claim is secured by a lien on property.

Nature of property:
☐ Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
☐ Motor vehicle
☐ Other. Describe: _____

Basis for perfection: _____
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: \$ _____

Amount of the claim that is secured: \$ _____

Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: \$ _____

Annual Interest Rate (when case was filed) _____ %
☐ Fixed
☐ Variable

10. Is this claim based on a lease? ☒ No
☐ Yes. Amount necessary to cure any default as of the date of the petition. \$ _____

11. Is this claim subject to a right of setoff? ☒ No
☐ Yes. Identify the property: _____

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

☒ No

☐ Yes. Check one:

☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Amount entitled to priority

\$ _____

☐ Up to \$2,850 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

\$ _____

☐ Wages, salaries, or commissions (up to \$12,850) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

\$ _____

☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

\$ _____

☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

\$ _____

☐ Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.

\$ _____

* Amounts are subject to adjustment on 4/01/19 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☒ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 10/16/2019 (mm/dd/yyyy)

/s/ Robert G. Harris

Signature

Print the name of the person who is completing and signing this claim:

Name Robert G. Harris

First name

Middle name

Last name

Title Partner

Company Binder & Malter, LLP.

Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 2775 Park Ave.

Number

Street

Santa Clara

Ca

95050

City

State

ZIP Code

Contact phone 408-295-1700

Email

rob@bindermalter.com

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

CRISTINA MENDOZA

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

STEVEN L. DERBY, Esq., ANTHONY GOLDSMITH, Esq., CELIA MCGUINNESS, Esq.
DERBY, MCGUINNESS & GOLDSMITH, 200 Lakeside Drive, Suite A, Oakland, CA 94612
Telephone: 510/987-8778; Fax: 510/359-4419

DEFENDANTS

CITY OF SAN JOSE, PACIFIC GAS & ELECTRIC COMPANY, a California registered domestic stock corporation, HUDSON SKYPORT PLAZA, LLC, a Delaware limited liability company, HUDSON SKYPORT PLAZA LAND, LLC, a Delaware limited liability company, HUDSON PACIFIC PROPERTIES, INC., a Maryland corporation, SPIEKER PROPERTIES LP, a California limited partnership, EOP OPERATING LIMITED PARTNERSHIP, LP, a Delaware limited partnership CA - SKYPORT I LIMITED PARTNERSHIP, a Delaware limited partnership; and DOES 1-100, Inclusive, Defendants

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment Of Veteran's Benefits <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC § 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC § 158 <input type="checkbox"/> 423 Withdrawal 28 USC § 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC § 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC § 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities-Employment <input checked="" type="checkbox"/> 446 Amer. w/Disabilities-Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee-Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation-Transfer ☐ 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Americans With Disabilities Act of 1990; 42 USC 12101ff; including 42 USC 12181 et seq
Brief description of cause:
Public facility denying access to physically disabled persons

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S),

IF ANY (See instructions):

JUDGE

DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only)

☐ SAN FRANCISCO/OAKLAND☒ SAN JOSE☐ EUREKA-MCKINLEYVILLE

DATE: 06/21/2017

SIGNATURE OF ATTORNEY OF RECORD: /s/ Celia McGuinness

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ATTACHMENT 1

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Telephone: (510) 987-8778
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Email: info@dmglawfirm.com

Attorney for Plaintiff
CRISTINA MENDOZA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

CRISTINA MENDOZA,

Plaintiff,

v.

CITY OF SAN JOSE, PACIFIC GAS &
ELECTRIC COMPANY, a California
registered domestic stock corporation,
HUDSON SKYPORT PLAZA, LLC, a
Delaware limited liability company,
HUDSON SKYPORT PLAZA LAND,
LLC, a Delaware limited liability company,
HUDSON PACIFIC PROPERTIES, INC.,
a Maryland corporation, SPIEKER
PROPERTIES LP, a California limited
partnership, EOP OPERTAING LIMITED
PARTNERSHIP, LP, a Delaware limited
partnership CA – SKYPORT I LIMITED
PARTNERSHIP, a Delaware limited
partnership; and DOES 1-100, Inclusive,
Defendants

Defendants.

CASE NO.

Civil Rights

**COMPLAINT FOR INJUNCTIVE RELIEF
AND DAMAGES**

DEMAND FOR JURY TRIAL

Plaintiff CRISTINA MENDOZA complains of Defendants CITY OF SAN JOSE Hudson Skyport Plaza, LLC, Hudson Skyport Plaza Land, LLC, Hudson Pacific Properties, Inc., Spieker Properties LP, EOP Operating Limited Partnership, CA – Skyport I Limited Partnership, Pacific Gas & Electric Company and DOES 1-100, inclusive, and each of them, and alleges as follows:

INTRODUCTION

1. This case involves the denial of accessible and safe sidewalks, walkways, and paths of travel to Plaintiff CRISTINA MENDOZA (“Plaintiff” or “Ms. Mendoza”), a qualified person with a disability, in connection with a sidewalk and walkways or portions thereof that were designed and/ or constructed and/ or owned and/or operated and/or maintained and/or inspected and/or subject to modifications and alterations by Defendants; as well as Plaintiff having been subjected to and severely injured by hazardous conditions created or allowed to exist by such Defendants. Additionally, Plaintiff is informed and believes and based thereon alleges that other inaccessible conditions, including, but not limited to, excessively sloped routes and pedestrian surfaces and paths of travel, exist at and about the property commonly known as 1650 Technology Drive, San Jose California and developed common areas associated therewith and create a violation of her State and federal civil rights as well as posing a hazard to her and other similarly situated persons.

2. As a result of the inaccessible and hazardous facilities, conditions and elements and other harmful conduct as alleged herein, Plaintiff suffered severe physical personal injuries as well as a denial of her civil rights. At all times herein mentioned, Plaintiff was and is a “person with a disability” or “physically handicapped person,” who is mobility impaired, and unable to safely use portions of walkways, sidewalks and other public facilities that are not fully accessible to physically disabled persons.

3. Plaintiff seeks injunctive relief; recovery of damages for both the personal injuries she incurred and the violation of her civil rights as well as the recovery of reasonable attorney fees, litigation expenses and costs.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction of this action pursuant to: (a) 28 USC § 1331 for violations of the Americans with Disabilities Act of 1990 (hereinafter, the “ADA”), 42 U.S.C. §§ 12101 et seq.; (b) 28 USC § 1343(3) for claims arising under § 504 of the Rehabilitation Act of 1973; and (c) 28 U.S.C. § 1367 for supplemental jurisdiction over attendant and related causes of action arising from the same nucleus of facts and brought under California law, including but not limited to violations of California Civil Code §§ 51, 54, 54.1, violations of California Government Code §§ 815.6, and 835 and common law negligence. This court also has jurisdiction over Plaintiff’s claims for declaratory or injunctive relief pursuant to the ADA, the Rehabilitation Act of 1973, 28 U.S.C. § 2202 and Rule 65 of the Federal Rules of Civil Procedure and State law authorizing injunctive relief.

5. Venue is proper in this court pursuant to 28 USC § 1391(b) because Plaintiff’s claims arose within the Judicial District of the United States District Court of the Northern District of California. This case is properly filed in the San Jose intradistrict as the incident occurred in the City of San Jose, the property at issue is located in the City of San Jose and one or more of the Defendants resides in the City of San Jose.

PARTIES

6. Plaintiff is and at all times relevant to this Complaint was, a “physically disabled person” and a “person with disabilities,” as these terms are used under California law and under federal laws, including but not limited to § 504 of the Rehabilitation Act of 1973 and the ADA. The terms “physically disabled person,” “person with a disability” and a “person with disabilities” will be used interchangeably throughout this Complaint. Ms. Mendoza requires the use of a wheelchair for mobility.

7. Defendant CITY OF SAN JOSE and DOES 1-3 (collectively, the “Government Defendants”) are public entities that on information and belief, at all times relevant to this Complaint designed and/or constructed and/or modified and/or maintained and/or inspected and/or owned, and/or operated and/or exerted control over the design, construction, maintenance,

inspection or modification of the sidewalk / walkway area where Plaintiff was injured. At all relevant times, Defendant PACIFIC GAS & ELECTRIC COMPANY, a California registered domestic stock corporation (hereinafter, PG&E) and DOES 4-20 are entities that, on information and belief, at all times relevant to this Complaint, designed and/or constructed and/or modified and/or maintained and/or inspected and/or owned, and/or operated and/or exerted control over the design, construction, maintenance, inspection or modification of the sidewalk/walkway area where Plaintiff was injured or some portion thereof. Defendants HUDSON SKYPORT PLAZA, LLC, a Delaware limited liability company, HUDSON SKYPORT PLAZA LAND, LLC, a Delaware limited liability company, HUDSON PACIFIC PROPERTIES, INC., a Maryland corporation, SPIEKER PROPERTIES, LP, a California limited partnership, EOP OPERTAING LIMITED PARTNERSHIP, LP, a Delaware limited partnership CA – SKYPORT I LIMITED PARTNERSHIP, a Delaware limited partnership and DOES 21-50 (collectively, the “Skyport Defendants”) are on information and belief entities that, at all times relevant to this Complaint, designed and/or constructed and/or altered and/or modified and currently own and/or operate (or at relevant times in the past, owned and/or operated) a property used as a place of public accommodation located in the city of San Jose, California at 1650 Skyport Drive and commonly known as Skyport Plaza (including ownership and operation of the sidewalk / walkway area where Plaintiff was injured). The property located at 1650 Skyport Drive in the City of San Jose (including all walks, sidewalks and paths of travel thereat) shall be referred to herein as the “Property” or the “Facility.” On information and belief, Defendant DOES 51-65 are or were agents, contractors, subcontractors or employees of Defendant CITY OF SAN JOSE or other DOE Defendants; DOES 66-80 are or were agents, contractors, subcontractors or employees of PG&E or other DOE Defendants; and DOES 80-100 are or were agents, contractors, subcontractors or employees of one or more of the Skyport Defendants or other DOE Defendants. On information and belief, Defendants CITY OF SAN JOSE, the Skyport Defendants and DOES 1-3 and 21-50 wrongfully discriminated against Plaintiff on the basis of her disability as part of a joint venture and common enterprise. Based on information and belief, Plaintiff alleges that all the named Defendants and DOE Defendants were negligent in connection with the manner in

1 which they designed and/or constructed and/or modified and/or maintained and/or inspected
 2 and/or owned, and/or operated and/or exerted control over the design, construction, maintenance,
 3 inspection or modification, alteration of the sidewalk / walkway area where Plaintiff was injured.

4 8. Plaintiff does not know the identities of DOES 1-100 at this time and prays leave
 5 to substitute the true names of each such Defendant when they have been ascertained.

6 9. Plaintiff does not know the relative responsibilities of the Defendants with respect
 7 to the responsibility for the design, construction, modification, alteration, maintenance or
 8 inspection of the operation of the programs, services, activities, public accommodations, facilities
 9 and elements herein complained of, and alleges a joint venture and common enterprise by
 10 Defendants in the ownership and/or operation of each such program, service, activity, public
 11 accommodation public accommodations, facilities and elements. Plaintiff is informed and
 12 believes that each of the Defendants herein is the agent, servant, employee, representative, joint
 13 venturer and/or common enterprise affiliate of each of the other Defendants, and performed all
 14 acts and omissions stated herein within the scope of such agency or employment or representative
 15 capacity or joint venture or common enterprise and is responsible, in some manner, for the acts
 16 and omissions of the other Defendants in proximately causing the damages complained of herein.

17 10. Plaintiff is informed and believes and on that basis alleges that each of the named
 18 Defendants and each of the fictitiously named Defendants are legally responsible in some manner
 19 for the occurrences herein alleged and that the injuries as alleged herein were caused by the acts
 20 and/or omissions of such Defendants. Adherence to the fiction of the separate existence of these
 21 certain Defendants as an entity distinct from certain other Defendants would permit an abuse of
 22 the corporate privilege and would sanction fraud and/or promote injustice.

23 24 **GOVERNMENT CLAIM FILED**

25 11. Plaintiff made timely claims for damages to Defendant CITY OF SAN JOSE on
 26 December 13, 2016. The Defendant CITY OF SAN JOSE rejected Plaintiff's claim effective
 27 December 22, 2016.

FACTUAL BASIS FOR COMPLAINT AGAINST ALL DEFENDANTS

12. On the evening of June 16, 2016, Plaintiff had dinner at the Sonoma Chicken Coop restaurant located at the Property. Plaintiff left the restaurant at about 8:30 p.m. from the doors that lead out to the parking lot of the Property. She was accompanied by her roommate. Plaintiff had called for an Uber ride to pick her and her roommate up and take them home. Plaintiff and her roommate decided to head to the corner of Skyport Drive and Technology Drive to meet their ride. They transited the walkway that led from the south door of the restaurant to the main sidewalk/walkway on the east side of Technology Drive. They proceeded north on the sidewalk/walkway. Before reaching the southeast corner of Technology Drive and Skyport Drive, the front wheels of Plaintiff's wheelchair hit a raised portion the south edge of the sidewalk/walkway section immediately north of a utility vault lid or cover. The section of sidewalk/walkway she was on demonstrated concrete chipping and spalling, leaving dangerous gouges/divots such that the sidewalk section just north of and adjacent to the divot/gouge was 1 ½" or higher. The section of sidewalk/ walkways she was on was lower than the adjoining section to the north, particularly on its left side. When Plaintiff's wheelchair wheels struck the higher edge of the sidewalk/walkway, it caused Plaintiff's wheelchair to abruptly stop, which caused her to fall forward out of her wheelchair onto the sidewalk / walkway, fracturing her right femur. The sidewalk/walkway in question was in a patently dangerous condition, as well as exhibiting non-compliance with State and federal disability rights laws, codes and regulations as set forth herein, in the area where Plaintiff was injured. At all relevant times, the Property, including the area of sidewalk/walkway on which Plaintiff was injured, was required to meet the standards of the ADA, including but not limited to the regulations set forth in 28 C.F.R. Part 36 (as to public accommodations) and 28 C.F.R. Part 35 (as to governmental entities). Compliance with the above regulations includes but is not limited to compliance Americans with Disabilities Act Accessibility Guidelines (as the same have been set forth, modified and incorporated into 28 C.F.R. Part 36 and 28 C.F.R. Part 35). In addition, at all relevant times, all construction, modifications, alterations, structural repairs and the like have been governed by the provisions of Title 24-2 of the California Code of Regulations (the "California Building Code"). At all relevant times both federal and State

1 regulations required that accessible routes (including the sidewalk/walkway where Plaintiff was
2 injured, demonstrate compliant slopes and cross slopes and avoid demonstrating abrupt changes
3 in level in excess of 1/4" (or 1/2" if beveled at 2:1).

4 13. There were no signs that warned of the dangerous conditions that caused
5 Plaintiff's injuries, so as to provide Plaintiff, (who was using the subject sidewalk/walkway with
6 due care), adequate time to prepare for and/or avoid the dangerous condition.

7 14. Plaintiff sustained the injuries and losses described herein as a result of the
8 negligence and violation of disabled access and safety standards protecting disabled persons and
9 others by Defendants and their employees and/or agents and/or contractor and/ or subcontractors
10 and the acts and omissions of Defendants and their employees and/or agents and/or contractors
11 and/ or subcontractors were a substantial factor in Plaintiff's injuries and other damages.

12 15. As a result of the aforementioned incident, Plaintiff sustained serious and
13 permanent injuries to her body and mind. Plaintiff has been compelled to incur obligations for,
14 *inter alia* medical care, medicines, medical imaging, hospitalizations, surgeries and related care,
15 and will, in the future, be compelled to incur additional obligations. Plaintiff's income and career
16 as a real estate professional have been impacted by the injuries she sustained and her loss of
17 income continues to accrue and on information and belief, impact her future earning capacity.

18 16. As a result of Defendants' failures to provide a safe and accessible
19 sidewalk/walkway, Plaintiff has, in addition to the injuries and losses described in paragraph 15
20 and elsewhere herein, suffered denial of her civil rights; including the denial to her right to full
21 and equal access to public facilities and public accommodations, and programs services and
22 activities, all to her general, special and statutory damages. Moreover, as a result of her injuries
23 and the inaccessible condition of the Property and sidewalk/walkway, Plaintiff has been deterred
24 from returning to use the Property, sidewalks, walkways, and paths of travel in question and thus
25 suffered a denial of her civil rights that continues to the date of filing this Complaint.

26 17. On information and belief, Plaintiff alleges that at all times herein mentioned,
27 Defendants had actual and/or constructive knowledge of the dangerous conditions and the risk of
28 injury of the type suffered by Plaintiff, with sufficient time to eliminate the defects and dangers in

question and failed to eliminate said defects and dangers. The subject sidewalks, walkways, and paths of travel, and their signing, configuration, and construction, which resulted from negligent, inadequate and/or incomplete property design, construction and/or maintenance, and/or modification or alteration, and/or inspection and/or other unusual conditions, in conjunction with the lack of warnings, given what the Defendants knew or should have known about the conditions of use, constituted a trap for wheelchair users and others traveling on the aforementioned sidewalk/walkway and exposed wheelchair users and others, including Plaintiff, to a significant risk of being injured by the dangerous conditions set forth above. Though the dangerous conditions in question posed a special and unique risk to people who use wheelchairs, the conditions were so hazardous as to pose a danger to any member of the general public.

18. Plaintiff is informed and believes and on that basis alleges, that Defendants owed a duty of care to Plaintiff to design, construct, alter, modify, inspect and maintain the subject property with reasonable care, that Defendants failed to exercise such care and diligence, and that the result of Defendants' breach of their duty of care resulted in Plaintiff's injuries and attendant damages. Additionally, Plaintiff avers that the condition of the sidewalk/walkway on which she was injured was so patently dangerous that Defendants intentionally allowed the condition to exist or that it was allowed to exist because of deliberate indifference on the part of Defendants to the fate of Plaintiff and people similarly situated.

19. Plaintiff is informed and believes that Defendants owned and/or operated and/or designed and/or constructed and/or modified/alterd and/or maintained and/or inspected and/or exerted control over the design, construction, maintenance, inspection, modification of the sidewalk/ walkway area where Plaintiff was injured at all times relevant in this Complaint.

CLAIMS AGAINST THE GOVERNMENT DEFENDANTS

FIRST CLAIM

(Against Defendant CITY OF SAN JOSE and DOES 1-3)

**[FOR DISCRIMINATION IN VIOLATION OF TITLE II OF THE AMERICANS WITH
DISABILITIES ACT OF 1990]**

20. Plaintiff repleads and incorporates by reference, as if fully set forth hereafter, the facts and allegations contained in Paragraphs 1 through 19 of this Complaint and incorporates them herein.

21. At all times herein mentioned, Plaintiff was entitled to the protections of the “Public Services” provisions of Title II of the ADA, Subpart A, which prohibits discrimination by any public entity as defined by 42 U.S.C. section 12131. Pursuant to 42 U.S.C. 12132, section 202 of Title II, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the “services, programs or activities” of a public entity, or be subjected to discrimination by such entity. Plaintiff was, at all times relevant herein, a qualified individual with a disability for all purposes under the ADA.

22. In violation of Title II of the ADA, the Government Defendants have failed to ensure that individuals with physical disabilities, such as Plaintiff, are not excluded from the “services, programs and activities” of its public sidewalk, walkway, and pathway system and facilities. By reason of Defendants’ discriminatory policies regarding the failure to provide accessible and useable elements, features and conditions in and to its public sidewalk, walkway, and pathway system, so as to render them “accessible to and useable by” mobility impaired persons, the Government Defendants have intentionally discriminated against Plaintiff in violation of Title II of the ADA and the regulations adopted to implement the ADA: including those regulations governing: (i) the design, construction, modification and alteration of elements, features and facilities in the public right or on or at other public properties; (ii) the inspection and maintenance of said elements, features, facilities or other public properties so that they remain in an accessible and useable condition; and (iii) and the provision of accessible programs, services and activities; all as set forth and mandated in 28 C.F.R. Part 35.

23. On information and belief, to the date of filing of this Complaint, the Government Defendants have failed to make the subject sidewalk/walkway where Plaintiff was injured accessible to and useable by people with disabilities and/or assure that both said Defendants and third parties design, construct, alter, inspect and maintain sidewalks/walkways and features within and connected to sidewalks/walkways (including utility vaults), in a useable and accessible

1 condition, as required by law.

2 24. Plaintiff has a need to, and wishes to return to and use the subject public sidewalk,
3 walkway, and path of travel programs, services, activities, and facilities complained of herein,
4 and is deterred from use of these subject public sidewalks, walkways and path of travel programs,
5 services, activities, and facilities until they are made accessible; particularly with respect to the
6 conditions where features in or connected to sidewalks and walkways create inaccessible and
7 hazardous abrupt changes in level. Plaintiff avers that, based on the condition of the features she
8 encountered, that Defendants intentionally violated the ADA and other disability rights laws as
9 demonstrated, at the least, through deliberate indifference to the needs and safety of people with
10 disabilities as to the condition of sidewalks and walkways and elements and features contained
11 therein.

12 13 **SECOND CLAIM**

14 **(Against Defendant CITY OF SAN JOSE and DOES 1-3)**

15 [FOR VIOLATIONS OF § 504 OF THE REHABILITATION ACT OF 1973 (29 U.S.C. § 794)]

16 25. Plaintiff repleads and incorporates by reference, as if fully set forth hereafter, the
17 facts and allegations contained in Paragraphs 1 through 24 of this Complaint and incorporates
18 them herein.

19 26. Plaintiff avers, on information and belief, that the Defendants CITY OF SAN
20 JOSE and DOES 1-3 are each a government agency existing under the laws of the State of
21 California with responsibility for, *inter alia*, owning, operating and maintaining the subject public
22 sidewalk, walkway, and path of travel programs, services, activities, and facilities described
23 hereinabove. Plaintiff is informed and believes and thereon alleges that the Government
24 Defendants, and each of them, has been a recipient of federal financial assistance and that part of
25 that financial assistance was and is used to fund the construction, alteration, and operations of the
26 subject public sidewalk, walkway, and path of travel programs, services, activities, facilities and
27 other related functions.

28 27. The Government Defendants have, on information and belief, failed to ensure that

individuals with physical disabilities such as Plaintiff are not excluded from the “services, programs and activities” of its public sidewalk, walkway, and pathway system and facilities. By reason of Defendants’ discriminatory policies regarding the failure to provide accessible elements, features and conditions in and to its public sidewalk, walkway, and pathway system, so as to render them “accessible to and useable by” mobility impaired persons, Defendants have intentionally discriminated against Plaintiff in violation of section 504 of the Rehabilitation Act of 1973, 29 U.S.C. section 794, and the regulations promulgated thereunder: including those regulations governing: (i) the design, construction, modification and alteration of elements and facilities in the public right of way or other public properties; (ii) the inspection and maintenance of said elements and facilities so that they remain in an accessible and useable condition; and (iii) and the provision of accessible programs, services and activities.

28. Plaintiff has a need to, and wishes to return to and use the subject public sidewalk, walkway, and path of travel programs, services, activities, and facilities complained of herein, and is deterred from use of these subject public sidewalks, walkways and path of travel programs, services, activities, and facilities until they are made accessible; particularly with respect to the conditions where features in or connected to sidewalks and walkways create inaccessible and hazardous abrupt changes in level.

THIRD CLAIM

(Against Defendant CITY OF SAN JOSE and DOES 1-3)

[FOR VIOLATIONS OF MANDATORY DUTY OF PUBLIC ENTITIES TO PROTECT AGAINST PARTICULAR KINDS OF INJURIES UNDER CALIFORNIA GOVERNMENT CODE § 815.6)]

29. Plaintiff repleads and incorporates by reference, as if fully set forth hereafter, the facts and allegations contained in Paragraphs 1 through 28 of this Complaint and incorporates them herein.

30. Section 815.6 of the California Government Code provides that, where a public entity is under a mandatory duty imposed by an enactment that is designed to protect against the

1 risk of a particular kind of injury, the public entity is liable for an injury of that kind proximately
 2 caused by its failure to discharge the duty unless the public entity establishes that it exercised
 3 reasonable diligence to discharge the duty.

4 31. On information and belief, the Government Defendants did not discharge a
 5 number of statutorily mandated duties imposed by federal and State statutes and regulations, as
 6 enumerated herein, all of which were enacted specifically for the purpose of protecting Plaintiff
 7 and other people with disabilities from discrimination and injuries. These duties include those set
 8 forth in the First Claim, above, for violation of the ADA; the Second Claim, above, for violation
 9 of Section 504 of the Rehabilitation Act of 1973; and the Fifth Claim, below, for violations of
 10 sections 51, 54 and 54.1 of the California Civil Code. Each of these laws, statutes and regulations
 11 were designed to prevent the acts of discrimination and injuries, including the physical injuries,
 12 suffered by Plaintiff.

13 32. Discovery has not commenced; investigation is only in its initial stages and is
 14 limited because Defendants have control of access to staff and records and information material
 15 to these claims. After discovery is underway, Plaintiff may learn more about other and additional
 16 mandatory duties that were violated and had a causal effect on the events and damages
 17 complained of herein. Therefore, Plaintiff intends to seek leave to amend this Complaint
 18 accordingly, as may become appropriate, up to the time of trial.

19 33. As set forth herein, Plaintiff is a person with a disability and is in all respects
 20 qualified and able to use public sidewalks, walkways, and paths of travel. The Government
 21 Defendants have (and at all relevant times herein had) a duty to provide safe and accessible paths
 22 of travel on sidewalks, walkways and paths of travel that they own, operate, and maintain or over
 23 which they otherwise exert control or responsibility. Plaintiff is informed and believes and based
 24 thereon alleges that the Government Defendants were/are aware of the discriminatorily
 25 inaccessible and hazardous conditions of subject sidewalk/walkway where Plaintiff was injured.
 26 Plaintiff is informed and believes and based thereon alleges that, despite knowing of these
 27 discriminatorily inaccessible and hazardous conditions, the Government Defendants did not
 28 exercise reasonable diligence or take appropriate steps to eliminate or mitigate these conditions.

34. On information and belief, the Government Defendants failed to discharge the duties referenced herein, thereby discriminating against Plaintiff and endangering her as well as other persons similarly situated.

35. The Government Defendants are statutorily liable under sections 815.2 and 815.4 of the California Government Code for the negligence and misconduct of their employees and contractors in violating Government Code section 815.6, as such negligence and misconduct occurred within the scope of their employment. The failure and refusal of the employees or contractors of the Government Defendants to abide by the mandates of California Government Code section 815.6 was, on information and belief, not the result of any exercise of discretion vested in any of Defendants' employees, or contractors; to the contrary, any and all employee of contractors of Defendants had a duty to abide by the mandates of section 815.6 and all similar statutes designed to prevent the types of injuries suffered by Plaintiff.

36. The violations of mandatory duties enunciated above were a substantial factor in causing Plaintiffs injuries, harms, losses, and discrimination set forth in this Complaint for which the Government Defendants, and each of them, are responsible. Plaintiff was, in no way, at fault for the incident wherein she sustained said injuries.

37. Plaintiff's injuries, including her physical injuries and denial of her civil rights, could have been prevented if the Government Defendants had discharged affirmative obligations required under statutes and regulations. The occurrences and harm alleged herein are within the scope of concerns, injuries, or harm precisely targeted for prevention by the statutes and regulations cited in this Claim and as set forth in this Complaint.

FOURTH CLAIM

(Against Defendant CITY OF SAN JOSE and DOES 1-3)

**[FOR DANGEROUS CONDITION OF PUBLIC PROPERTY UNDER CALIFORNIA
GOVERNMENT CODE § 835]**

38. Plaintiff repleads and incorporates by reference, as if fully set forth hereafter, the facts and allegations contained in Paragraphs 1 through 37 of this Complaint and incorporates

1 them herein.

2 39. Section 835 of the California Government Code provides that, except as otherwise
3 provided by statute, a public entity is liable for injury caused by a dangerous condition of its
4 property if the plaintiff establishes that the property was in a dangerous condition at the time of
5 the injury, that the injury was proximately caused by the dangerous condition, that the dangerous
6 condition created a reasonably foreseeable risk of the kind of injury which was incurred, and that
7 either: (a) a negligent or wrongful act or omission of an employee of the public entity within the
8 scope of his or her employment created the dangerous condition; or (b) The public entity had
9 actual or constructive notice of the dangerous condition for a sufficient time prior to the injury to
10 have taken measures to protect against the dangerous condition.

11 40. On information and belief, at relevant times set forth in this Complaint, the
12 Government Defendants owned and/or controlled the portion of the sidewalk/walkway where
13 Plaintiff was injured.

14 41. Plaintiff alleges, on information and belief, that the dangerous condition of the
15 sidewalk/walkway where Plaintiff was injured: (a) was created by the negligent or wrongful acts
16 or omissions of one or more employees of one or more of the Government Defendants acting
17 within the course and scope of their employment and/or (b) Defendants City of San Jose and/or
18 DOES 1-3 had notice of the dangerous conditions that injured Plaintiff for a long enough period
19 of time to have corrected said conditions.

20 42. The condition of the sidewalk/walkway on which Plaintiff was injured and the acts
21 or omissions of Defendants (including the acts or omissions of their employees acting within the
22 course and scope of their duties) created a reasonably foreseeable risk that Plaintiff would
23 experience the type of fall and suffer the sorts of injuries alleged herein.

24 43. The violations of the duties enunciated above were the proximate cause of and a
25 substantial factor in causing Plaintiff's injuries, harms, losses, and discrimination set forth in this
26 Complaint for which the Government Defendants, and each of them, are responsible. Plaintiff
27 was, in no way, at fault for the incident wherein she sustained said injuries.

FIFTH CLAIM

(Against Defendant City of San Jose and DOES 1-3)

[FOR VIOLATION OF SECTIONS CALIFORNIA CIVIL CODE §§ 51, 54, 54.1 AND
CALIFORNIA GOVERNMENT CODE §§ 4450 et seq.]

44. Plaintiff repleads and incorporate by reference, as if fully set forth hereafter, the allegations contained in Paragraphs 1 through 43 of this Complaint and incorporate them herein.

45. At all times relevant to this Complaint, California Civil Code section 54(a) has provided, in pertinent part, that: “(a) Individuals with disabilities or medical conditions have the same right as the general public to the full and free use of the streets, highways, sidewalks, walkways, public buildings. . . public facilities and other public places.”

46. At all times relevant to this Complaint, California Civil Code section 54.1 has provided that physically disabled persons are not to be discriminated against because of physical handicap or disability in the use of a public accommodation:

. . . [P]hysically disabled persons shall be entitled to full and equal access, as other members of the general public, to accommodations, advantages, facilities and privileges of all common carriers, airplanes, motor vehicles. . . or any other public conveyances or modes of transportation, telephone facilities, hotels, lodging places, places of public accommodation, and amusement or resort, and other places to which the general public is invited, subject only to the conditions or limitations established by law, or state or other federal regulations, and applicable alike to all other persons.

47. At all times relevant to this Complaint, California Civil Code section 51(b) provided, in pertinent part:

(b) All persons within the jurisdiction of this state are free and equal and no matter what their sex, race, color, religion, ancestry, national origin, disability, or medical conditions, are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

48. Plaintiff is informed and believes and therefore alleges that the specified public sidewalk/walkway elements on which she was injured (or related facilities or elements) and the Government Defendants programs, services and activities of operating a sidewalk are and were required to be accessible within the meaning of California Government Code sections 4450 and 4451 *et seq.* Plaintiff is further informed and believes and therefore alleges that the Government

Defendants constructed and/or conducted alterations, structural repairs or additions of the sidewalk/walkway on which Plaintiff was injured or on other property connected therewith, since 1968 within the meaning of Government Code sections 4450 *et seq.*, including section 4456, thereby requiring provision of access to persons with disabilities, as required by law.

Additionally, Title 24-2 of the California Code of Regulations requires that facilities and elements that are required to be accessible must be maintained in an accessible condition. Further, Plaintiff alleges that, at all relevant times, the Government Defendants were required to comply with Title II of the ADA, as more fully set forth in the First Claim, above and failed to do so; including, without limitation, failures in: (i) the design, construction, modification and alteration of elements and facilities in the public right of way or other public properties; (ii) the inspection and maintenance of said elements and facilities so that they remain in an accessible and useable condition; and (iii) the provision of accessible programs, services and activities.

49. Plaintiff and other similarly situated people with mobility disabilities, are unable to use sidewalks, walkways, public buildings, public facilities and other public facilities, businesses and public accommodations on a “full and equal” basis unless each such facility is in compliance with the provisions of California Health & Safety Code sections 4450 *et seq.* and the ADA. Plaintiff is a member of that portion of the public whose rights are protected by the provisions of Health & Safety Code sections 4450 *et seq.*

50. On information and belief, the actions and omissions of the Government Defendants, as herein alleged, constitute a denial of access to and use of the described to and use of the described sidewalks, walkways, public buildings, public facilities and other public facilities, businesses and public accommodations by Plaintiff and other similarly situated physically disabled persons within the meaning of Government Code sections 4450 *et seq.* As a result of Defendants' action and omissions, Defendants have discriminated against Plaintiff in violation of Government Code sections 4450 *et seq.*, and of the regulations adopted to implement section 4450 as set forth in the California Code of Regulations, Title 24-2. A violation of sections 4450 *et seq.* constitutes a violation of general anti-discrimination provisions Civil Code sections 51(b), 54 and 54.1.

51. Each violation of the Americans With Disabilities Act of 1990 (as pled in the First Claim) also constitutes a violation of sections 51(f), 54(c) and 54.1(d) of the California Civil Code, thus independently justifying an award of damages and injunctive relief pursuant to California law. Plaintiff alleges that she has been denied such full and equal access as required by California law which incorporates Title II of the ADA.

52. Each violation of Plaintiff's rights under section 51 of the Civil Code entitles Plaintiff to injunctive relief and an award of damages, attorneys' fees and costs pursuant to § 52 of the Civil Code. Each violation of Plaintiff's rights under §§54 or 54.1 of the Civil Code entitles Plaintiff to an award of damages, attorneys' fees and costs pursuant to §54.3 of the Civil Code.

**CLAIMS AGAINST THE SKYPORT DEFENDANTS RELATING TO THE FAILURE
TO PROVIDE ACCESSIBLE PLACES OF PUBLIC ACCOMMODATION IN
VIOLATION OF FEDERAL AND STATE CIVIL RIGHTS LAWS**

SIXTH CLAIM

(Against Hudson Skyport Plaza, LLC, Hudson Skyport Plaza Land, LLC, Hudson Pacific Properties, Inc., Spieker Properties LP, EOP Operating Limited Partnership, CA – Skyport I Limited Partnership and DOES 21-50)

**[FOR DISCRIMINATION IN VIOLATION OF TITLE III OF THE AMERICANS WITH
DISABILITIES ACT OF 1990]**

53. Plaintiff repleads and incorporates by reference, as if fully set forth hereafter, the facts and allegations contained in Paragraphs 1 through 52 of this Complaint and incorporates them herein.

54. Based on the facts and allegations above (which Plaintiff re-pleads and incorporates herein by reference), Plaintiff was denied full and equal enjoyment of and access to the Skyport Defendants' goods, services, facilities, privileges, advantages or accommodations in violation of the ADA. Plaintiff alleges that the Skyport Defendants owned or own, leased or lease and/or

operated or operate a place of public accommodation as the term public accommodation is defined in 42 U.S.C. section 12181(7). The condition of Skyport Defendants' Facility and/or the manner in which Skyport Defendants provided services, failed to provide full and equal access to Defendants' goods and services in public accommodations as required, generally, by the provisions of 42 U.S.C. section 12182(a) and 42 U.S.C. section 12182(b)(1)(A). As set forth in this Complaint below, Plaintiff was specifically subjected to discrimination in violation of 42 U.S.C. sections 12182(b)(2)(A)(iv), 12182(b)(2)(A)(v), 12182(b)(2)(A)(iii), 12183, and 12188 because Plaintiff was denied equal access to and enjoyment of the Facility.

55. Plaintiff has physical disabilities as alleged above because Plaintiff's conditions affect one or more of the following body systems: Neurological, musculoskeletal, special sense organs, and/or cardiovascular. Further, Plaintiff's physical impairments substantially limit major life activities; including standing and walking. Plaintiff cannot perform the above-noted major life activities in the manner, speed and duration when compared to the average person. Moreover, Plaintiff has a history of or has been diagnosed and/or classified as having a physical impairment as required by 42 U.S.C. section 12102(2)(A).

56. One of the specific prohibitions against discrimination under the ADA is set forth in 42 U.S.C. section 12182(b)(2)(A)(iv). That Section prohibits, in pertinent part: "A failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities ... where such removal is readily achievable."

57. Plaintiff alleges, on information and belief, that the removal of each of the specific barriers that Plaintiff encountered as set forth above, was at all times, "readily achievable" pursuant to the factors set forth in the ADA and the applicable Regulations adopted by the United States Department of Justice under the ADA (said Regulations being set forth in 28 CFR Part 36). Further, assuming, *arguendo*, that the Skyport Defendants were able to meet their burden of proof that the removal of the defined architectural barriers (or any of them) was or is not "readily achievable," the Skyport Defendants have conspicuously failed to make their goods, services, facilities, privileges, advantages and/or accommodations available through alternative readily achievable means pursuant to the requirements of 42 U.S.C. section 12182(b)(2)(A)(v).

58. The specific prohibitions against discrimination under the ADA, as set forth in 42 U.S.C. section 12182(b)(2)(A)(ii) proscribe the following: “A failure to make reasonable modifications in policies, practices and procedures when such modifications are necessary to afford such goods, services, facilities, privileges, advantages or accommodations to individuals with disabilities . . .”

59. Based on the facts and allegations pled herein, the Skyport Defendants failed and refused to reasonably modify their policies, practices and procedures in that they failed to have a scheme, plan or design to assist Plaintiff and/or others similarly situated in enjoying and utilizing Defendants’ services, facilities, privileges, advantages or accommodations, as required by the ADA. Additionally, the Skyport Defendants conspicuously failed to adopt required policies and procedures to allow people with disabilities to effectively and safely navigate the Property.

60. Plaintiff is informed and believes and based thereon alleges that the Skyport Defendants designed, built and constructed the Facility on or after January 26, 1993, and modified and altered the Facility on or after January 26, 1992, in a manner that affects the usability and accessibility of the Facility. The ADA specifically prohibits discrimination against persons with disabilities in the construction and alteration of covered public accommodation properties and commercial facilities. In this regard, 42 U.S.C. section 12183(a)(1) states that discrimination includes a failure to design and construct facilities for first occupancy later than January 26, 1993, that are readily accessible to and usable by individuals with disabilities, except where an entity can demonstrate that it is structurally impracticable. In the instant case, Plaintiff is informed and believes and based thereon alleges that the Facility was constructed after January 26, 1993, and that the barrier that caused her physical injuries and /or the other barriers at the Property, were in existence at the time the Facility was constructed.

61. As to alterations and modifications of covered public accommodation properties and commercial facilities, the ADA specifically prohibits discrimination caused by failing to design and conduct alterations and modifications in compliance with the Act. On information and belief Plaintiff alleges that the Skyport Defendants, at times relevant to this Complaint, conducted alterations and modifications at the Property that would have required the elimination of the

1 barrier on the sidewalk/walkway that injured Plaintiff and the other surface slope and condition
 2 barriers that she has been informed and believes exist at the Facility. In this regard 42 U.S.C.
 3 section 12183(a)(2) states:

4 (2) with respect to a facility or part thereof that is altered by, on behalf of, or for
 5 the use of an establishment in a manner that affects or could affect the usability of
 6 the facility or part thereof, a failure to make alterations in such a manner that, to
 7 the maximum extent feasible, the altered portions of the facility are readily
 8 accessible to and usable by individuals with disabilities, including individuals who
 9 use wheelchairs. Where the entity is undertaking an alteration that affects or could
 10 affect usability of or access to an area of the facility containing a primary function,
 11 the entity shall also make the alterations in such a manner that, to the maximum
 extent feasible, the path of travel to the altered area and the bathrooms, telephones,
 and drinking fountains serving the altered area, are readily accessible to and usable
 by individuals with disabilities where such alterations to the path of travel or the
 bathrooms, telephones, and drinking fountains serving the altered area are not
 disproportionate to the overall alterations in terms of cost and scope (as determined
 under criteria established by the Attorney General).

12 62. Sections 36.402 and 36.403 of 28 C.F.R. Part 36 contain the regulations called for
 13 and referenced in 42 U.S.C. section 12183(a)(2). As enforceable at the time of the incident
 14 alleged herein, Section 36.402 of 28 C.F.R. Part 36 states, in pertinent part:

15 (a) General. (1) Any alteration to a place of public accommodation or a
 16 commercial facility, after January 26, 1992, shall be made so as to ensure that, to
 17 the maximum extent feasible, the altered portions of the facility are readily
 accessible to and usable by individuals with disabilities, including individuals who
 use wheelchairs.

18 (2) An alteration is deemed to be undertaken after January 26, 1992, if the
 physical alteration of the property begins after that date.

19 (b) Alteration. For the purposes of this part, an alteration is a change to a place of
 20 public accommodation or a commercial facility that affects or could affect the
 usability of the building or facility or any part thereof.

21 (1) Alterations include, but are not limited to, remodeling, renovation,
 22 rehabilitation, reconstruction, historic restoration, changes or rearrangement in
 structural parts or elements, and changes or rearrangement in the plan
 configuration of walls and full-height partitions...

23 (2) If existing elements, spaces, or common areas are altered, then each
 such altered element, space, or area shall comply with the applicable provisions of
 appendix A to this part.

24 63. Section 36.403(a) of 28 C.F.R. Part 36 requires additional "path of travel"
 25 accessibility work to be conducted in connection with certain alterations. That section, as
 26 enforceable at the time of the incidents alleged herein states, in pertinent part:

27 (a) General. An alteration that affects or could affect the usability of or access to
 28 an area of a facility that contains a primary function shall be made so as to ensure
 that, to the maximum extent feasible, the path of travel to the altered area and the

1 restrooms, telephones, and drinking fountains serving the altered area, are readily
 2 accessible to and usable by individuals with disabilities, including individuals who
 3 use wheelchairs, unless the cost and scope of such alterations is disproportionate to
 4 the cost of the overall alteration.

5 Section 36.403(e) defines a path of travel as follows:

6 (e) Path of Travel.

7 (1) A 'path of travel' includes a continuous, unobstructed way of pedestrian
 8 passage by means of which the altered area may be approached, entered, and
 9 exited, and which connects the altered area with an exterior approach (including
 10 sidewalks, streets, and parking areas), an entrance to the facility, and other parts
 11 of the facility.

12 (2) An accessible path of travel may consist of walks and sidewalks, curb ramps
 13 and other interior or exterior pedestrian ramps; clear floor paths through lobbies,
 14 corridors, rooms, and other improved areas; parking access aisles; elevators and
 15 lifts; or a combination of these elements.

16 (3) For the purposes of this part, the term 'path of travel' also includes the
 17 restrooms, telephones, and drinking fountains serving the altered area.

18 64. Section 36.403(f), as enforceable as of the time of the incidents alleged herein
 19 limits required changes to the path of travel to those changes that are not "disproportionate" to the
 20 work being conducted in the area of primary function. Section 36.403(f) states, in pertinent part:
 21 "(f) Disproportionality. (1) Alterations made to provide an accessible path of travel to the altered
 22 area will be deemed disproportionate to the overall alteration when the cost exceeds 20% of the
 23 cost of the alteration to the primary function area."

24 65. In the instant case, Plaintiff is informed and believes and based thereon alleges
 25 that the Facility was modified and/or altered after January 26, 1992, and that the barrier that
 26 caused her physical injuries and/or the other barriers at the Property were created by or should
 27 have been remediated or eliminated in connection with said modifications and alterations.

28 66. Plaintiff has a need to, and wishes to return to and use the subject Facility but is
 deterred from doing so; particularly with respect to the conditions where features in or connected
 to sidewalks, walkways and paths of travel create inaccessible and hazardous abrupt changes in
 level or demonstrate non-compliant slopes and cross slopes.

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SEVENTH CLAIM

(Against Hudson Skyport Plaza, LLC, Hudson Skyport Plaza Land, LLC, Hudson Pacific Properties, Inc., Spieker Properties LP, EOP Operating Limited Partnership, CA – Skyport I Limited Partnership and DOES 21-50)

[FOR VIOLATION OF CALIFORNIA CIVIL CODE §§ 51, 54, 54.1 and CALIFORNIA HEALTH & SAFETY CODE §§ 19953 et seq.]

67. Plaintiff repleads and incorporates by reference, as if fully set forth hereafter, the facts and allegations contained in Paragraphs 1 through 66 of this Complaint and incorporates them herein.

68. At all times relevant to this Complaint, California Civil Code section 54(a) has provided that:

(a) Individuals with disabilities or medical conditions have the same right as the general public to the full and free use of the streets, highways, sidewalks, walkways, public buildings..., public facilities and other public places.

69. At all times relevant to this Complaint, California Civil Code section 54.1 has provided that physically disabled persons are not to be discriminated against because of physical handicap or disability in the use of a public accommodation:

. . . [P]hysically disabled persons shall be entitled to full and equal access, as other members of the general public, to accommodations, advantages, facilities and privileges of all common carriers, airplanes, motor vehicles. . . or any other public conveyances or modes of transportation, telephone facilities, hotels, lodging places, places of public accommodation, and amusement or resort, and other places to which the general public is invited, subject only to the conditions or limitations established by law, or state or other federal regulations, and applicable alike to all other persons.

70. At all times relevant to this Complaint, California Civil Code section 51(b) has provided, in pertinent part:

(b) All persons within the jurisdiction of this state are free and equal and no matter what their sex, race, color, religion, ancestry, national origin, disability, or medical conditions, are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

71. Health & Safety Code sections 19955 and 19955.5 were enacted “[t]o ensure that public accommodations or facilities constructed in this state with private funds adhere to the

provisions of Chapter 7 (commencing with Section 4450) of Division 5 of Title 1 of the Government Code.” On information and belief, the provisions of both Health and Safety Code sections 19955 and 19955.5, apply to the Property. Title 24, California Code of Regulations, was in effect at the time of the construction of the Facility and at each alteration, structural repair or modification which, on information and belief, occurred at such Facility, thus requiring access complying with the specifications of Title 24 whenever new construction was undertaken or each such alterations, structural repairs or additions were carried out. On information and belief, the Skyport Defendants designed and constructed the Facility, including but not limited to the sidewalk/walkway on which Plaintiff was injured and/or carried out alterations, structural repairs, or additions to the Facility buildings and other facilities and elements during the period Title 24 has been in effect that would have required them to assure the existence of accessible routes, including the sidewalk/walkway where Plaintiff was injured. Additionally, Title 24 requires that buildings, facilities and elements that are required to be accessible must be maintained in an accessible condition. Further, Plaintiff alleges that, at all relevant times, the Skyport Defendants were required to comply with Title III of the ADA, as more fully set forth in the Sixth Claim, above, and on information and belief, failed to do so, including without limitation: (i) failures in the design, construction, modification and alteration of elements of the Facility; (ii) failure to remove barriers at the Facility to the extent that the same was readily achievable; (iii) failure to adopt a plan or scheme to assure access to people with disabilities; (iv) failure to modify policies practices and procedures to assure access at the Facility; and (v) failure to maintain elements and features required to be accessible in an accessible and useable condition.

72. Plaintiff and other similarly situated physically disabled persons, including those who require the use of a wheelchair, are unable to use sidewalks, walkways, public buildings, public facilities and other public facilities, businesses and public accommodations on a “full and equal” basis unless each such facility is in compliance with the provisions of California Health & Safety Code sections 19953 *et seq.* Plaintiff is a member of that portion of the public whose rights are protected by the provisions of Health & Safety Code sections 19953 *et seq.*

73. The actions and omissions of these Defendants, as herein alleged, constitute a

denial of access to and use of the described sidewalks, walkways, public buildings, public facilities and other public facilities, businesses and public accommodations by Plaintiff and other similarly situated physically disabled persons within the meaning of Government Code sections 19953 *et seq.* As a proximate result of Defendants' action and omissions, Defendants have discriminated against Plaintiff in violation of Government Code sections 19953 *et seq.*, and of regulations set forth in the California Code of Regulations, Title 24-2 adopted to implement section 4450. A violation of these sections and the Title 24-2 regulations adopted thereunder constitutes a violation of the general anti-discrimination provisions Civil Code sections 51(b), 54 and 54.1.

74. Each violation of the Americans With Disabilities Act of 1990 (as pled in the Sixth Cause of Action) also constitutes a violation of sections 51(f), 54(c) and 54.1(d) of the California Civil Code, thus independently justifying an award of damages and injunctive relief pursuant to California law. Plaintiff alleges that she has been denied such full and equal access as required by California law which incorporates Title III of the ADA.

75. Each violation of Plaintiff's rights under section 51 of the Civil Code entitles Plaintiff to injunctive relief and an award of damages, attorneys' fees and costs pursuant to section 52 of the Civil Code. Each violation of Plaintiff's rights under sections 54 or 54.1 of the Civil Code entitles Plaintiff to an award of damages, attorneys' fees and costs pursuant to section 54.3 of the Civil Code.

EIGHTH CLAIM

**(Against Defendants Pacific Gas & Electric Company, Hudson Skyport Plaza, LLC,
Hudson Skyport Plaza Land, LLC, Hudson Pacific Properties, Inc., Spieker Properties LP,
EOP Operating Limited Partnership, CA – Skyport I Limited Partnership and DOES 4-
100)**

[NEGLIGENCE AND NEGLIGENCE PER SE]

76. Plaintiff replreads and incorporates by reference, as if fully set forth hereafter, the facts and allegations contained in Paragraphs 1 through 75 of this Complaint and incorporates them herein.

1 77. At all times herein mentioned the Property where the subject incident that forms the
2 basis of this lawsuit occurred created and/or was in a dangerous condition due to the negligence
3 and other breaches of duty owed to Plaintiff by Defendants.

4 78. As a proximate result of the dangerous conditions, Plaintiff sustained serious and
5 permanent injuries and attendant damages as set forth herein.

6 79. The known dangerous conditions, as described above, created a substantial risk of
7 the type of injury alleged herein when the Property was used with due care in a manner in which it
8 was reasonably foreseeable that such Property would be used.

9 80. At all times relevant to this Complaint, on information and belief, Defendants, and
10 each of them, owned, operated, maintained, controlled, designed, constructed, altered, modified,
11 equipped, supervised, and administered the area which is the subject of this Complaint, such that
12 they were in some manner substantially responsible for property design, construction,
13 maintenance, repair, inspection, monitoring, and signing, and/or other work that was conducted in
14 the subject area or in the area surrounding the place where the Plaintiff was injured.

15 81. Defendants, and each of them, through their acts and omissions, created the
16 dangerous conditions and/or failed to remedy the dangerous conditions and/or failed to warn of the
17 dangerous conditions.

18 82. Defendants, and each of them, had the authority and the funds and other means
19 available to take alternative action that would not have created the dangerous conditions.

20 83. Defendants, and each of them, had the authority and the responsibility to take
21 adequate measures to protect against the dangerous conditions that caused Plaintiff's injuries.

22 84. Although these Defendants had actual and/or constructive knowledge of the
23 dangerous conditions of the Property they failed to warn the public of the dangerous conditions.

24 85. Prior to or on or about the date of Plaintiff's injury, these Defendants, their
25 employees, contractors, subcontractors and agents, and each of them, acting within the scope of
26 their employment, were negligent and careless in doing the acts set forth above, which negligence
27 created the dangerous conditions as described herein.

28 86. These Defendants, and each of them, were further negligent in that they failed to

1 monitor and/or inspect their work or the area so as to determine if there were conditions which
 2 would develop that would pose a risk of harm to individuals that would be using the public
 3 property in a foreseeable manner. Additionally, Defendants, and each of them, failed to inspect,
 4 warn, and perform adequate repair and/or maintenance of the Property.

5 87. Defendants, their employees, contractors, subcontractors and agents, and each of
 6 them, had actual and/or constructive knowledge of the existence of the dangerous condition(s) and
 7 knew or should have known of their dangerous character in that the condition had existed for a
 8 sufficient period of time, and was of such a nature that Defendants, in the exercise of due care
 9 should have discovered the conditions and their dangerous character within a sufficient period of
 10 time prior to the occurrence of the accident to have taken measures to protect against the
 11 dangerous conditions.

12 88. At all times, Defendants failed to install any safety and/or preventative measures to
 13 guard against accidents in the area of the Property at issue.

14 89. As a result of such negligence, Plaintiff has sustained damages.

15 90. At all times, Plaintiff was owed a duty of reasonable care to prevent injury to
 16 members of the public, including Plaintiff, by Defendants. Through their acts and omissions,
 17 Defendants breached the duty of reasonable care to prevent injury to Plaintiff. As a result of such
 18 acts and/or omissions by Defendants, Plaintiff suffered personal injuries and attendant damages.
 19 As such, Defendants are liable to Plaintiff.

20 91. Plaintiff in no way contributed nor was she in any way at fault for any of the
 21 injuries she sustained and the negligence of defendants as alleged herein above was a substantial
 22 factor in Plaintiff's fall and injury.

23 92. As and to the extent that the Skyport Defendants, PG&E, as well as any other
 24 Defendant, violated any statute, law or ordinance designed to protect against the sorts of risks that
 25 caused Plaintiff's fall and injuries, including but not limited to the ADA, sections 51, 54, 54.1 of
 26 the California Civil Code, sections 19953 *et seq.* of the California Government Code, Title 24-2 of
 27 the California Code of Regulations and section 14.16.2200 of the San Jose Municipal Code
 28 concerning the construction, modification, alteration, inspection and maintenance of features

designed to provide for safe and accessible conditions for people with disabilities or the general public the negligence of said Defendants constitutes negligence *per se*.

93. To the extent that any of the negligent acts or omissions alleged herein were the result of the negligence of any Defendant's employees acting in the course and scope of their employment, said Defendants are liable for the acts or omissions of said employees under the principles of *respondeat superior*.

NINTH CLAIM

(Against Hudson Skyport Plaza, LLC, Hudson Skyport Plaza Land, LLC, Hudson Pacific Properties, Inc., Spieker Properties LP, EOP Operating Limited Partnership, CA – Skyport I Limited Partnership and DOES 21-50)

[FOR VIOLATION OF SAN JOSE MUNICIAPAL CODE SECTION 14.16.2200]

94. Plaintiff repleads and incorporates by reference, as if fully set forth hereafter, the facts and allegations contained in Paragraphs 1 through 93 of this Complaint and incorporates them herein.

95. At all times relevant to this Complaint, Subsection B of section 14.16.2200 of the San Jose Municipal Code has stated:

B. The owners of lots or portions of lots adjacent to or fronting on any portion of a sidewalk area between the property line of the lots and the street line, including parking strips, sidewalks, curbs and gutters, and persons in possession of such lots by virtue of any permit or right shall repair and maintain such sidewalk areas and pay the costs and expenses therefore, including a charge for the city of Jose's costs of inspection and administration whenever the city awards a contract for such maintenance and repair and including the costs of collection of assessments for the costs of maintenance and repair under subsection A of this section or handling of any lien places on the property due to failure of the property owner to promptly pay such assessments.

96. At all times relevant to this Complaint, Subsection C of section 14.16.2200 of the San Jose Municipal Code has stated:

C. For the purposes of this part, maintenance and repair of sidewalk area shall include, but not be limited to, maintenance and repair of surfaces including grinding, removal and replacement of sidewalks, repair and maintenance of curb and gutters, removal and filling or replacement of parking strips, removal of weeds and/or debris, supervision and maintenance of signs allowed pursuant to Section 23.04.340 and Section 23.04.830, tree root pruning and installing root barriers, trimming of shrubs and/or ground cover and trimming shrubs within the

1 area between the property line of the adjacent property and the street pavement
 2 line, including parking strips and curbs, so that the sidewalk area will remain in a
 3 condition that is not dangerous to property or persons using the sidewalk in a
 reasonable manner and will be in a condition which will not interfere with the
 public convenience in the use of said sidewalk area.

4 97. At all times relevant to this Complaint, Section 14.16.2205 of the San Jose
 5 Municipal Code has stated:

6 14.16.2205 Liability for injury to public. The property owner required by Section
 7 14.16.2200 to maintain and repair the sidewalk area shall owe a duty to members
 8 of the public to maintain the sidewalk area in a safe and nondangerous condition.
 9 If, as a result of any property owner to maintain the sidewalk area in a
 nondangerous condition as required by Section 14.16.2200, any person suffers
 injury or damage to person or property, the property owner shall be liable to such
 person for the resulting damages or injury.

10 98. At all times relevant to this Complaint, one or more of the Skyport Defendants
 11 owns and/or owned the Property and was required to maintain the sidewalk/walkway where the
 12 Plaintiff was injured in a safe and nondangerous condition. The failure of the Skyport Defendants
 13 to discharge this duty resulted in the injuries to Plaintiff set forth herein and said defendants are
 14 therefore liable for Plaintiff's injuries per section 14.16.2205 of the San Jose Municipal Code.

15
 16 WHEREFORE, Plaintiff prays that this Court:

17 **PRAYER FOR RELIEF**

18 **AS TO CLAIMS AGAINST THE GOVERNMENT DEFENDANTS FOR THE FIRST,**
 19 **SECOND, THIRD, FOURTH AND FIFTH CLAIMS**

20 1. Issue a preliminary and permanent injunction (under 42 U.S.C. 12133 to address
 21 violations of Title II of the ADA as pled in the First Claim, and under 29 U.S.C. 794(a) to
 22 address violations of section 504 of the Rehabilitation Act of 1973 as pled in the Second Claim)
 23 directing that the Government Defendants -- as current owners and operators of the subject public
 24 sidewalk, walkway, and path of travel programs, services, activities, and facilities -- modify the
 25 above-described subject public sidewalk, walkway, and path of travel programs, services,
 26 activities, and facilities so that Plaintiff and similarly situated persons with disabilities may obtain
 27 the benefits of, and access to these programs, services and activities in a "full and equal" manner;
 28 and to maintain each such subject public sidewalk, walkway, and path of travel program, service,

1 activity and facility in an accessible and non-hazardous condition; and to continue to maintain
 2 adequate subject public sidewalks, walkways, and path of travel programs, services, activities,
 3 and facilities for use by disabled persons so long as any such public sidewalks, walkways, and
 4 path of travel programs, services, activities, and facilities are maintained for the use of able-
 5 bodied persons. Particularly, Plaintiff seeks an injunction that would require said Defendants to
 6 provide sidewalk and walkway features that do not contain inaccessible abrupt changes of level in
 7 excess of ¼” and to establish protocols for the inspection of sidewalks and walkways that would
 8 detect and eliminate said barriers;

9 2. Retain jurisdiction over the Government Defendants until such time as the Court is
 10 satisfied that said Defendants’ unlawful policies, practices, acts and omissions, and maintenance
 11 of inaccessible subject public sidewalk, walkway, and path of travel programs, services, activities,
 12 and facilities as complained of herein no longer occur, and will not recur;

13 3. Award to Plaintiff all appropriate damages, including but not limited to statutory
 14 damages, special damages, general damages in an amount within the jurisdiction of the Court,
 15 according to proof under: (1) 42 U.S.C. section 12133, (for violation of Title II of the ADA, as set
 16 forth in the First Claim); (2) 29 U.S.C. section 794(a) (for violation of Section 504 of the
 17 Rehabilitation Act of 1973 as set forth in the Second Claim); (3) for breach of duties under
 18 sections 815.6 and 835 of the California Government Code (as set forth in the Third and Fourth
 19 Claims, respectively). Additionally, Plaintiff seeks up to three times her actual damages for each
 20 violation of section 51 of the California Civil Code (per section 52 of the California Civil Code)
 21 and each violation of sections 54 and 54.1 of the California Civil Code (per section 54.3 of the
 22 California Civil Code); provided that Plaintiff shall, before trial, elect as to whether to pursue an
 23 award of damages under section 52 or section 54.3;

24 4. Award Plaintiff all reasonable attorneys’ fees, litigation expenses and costs of this
 25 proceeding, as provided by 42 U.S.C. section 12133 (for violations of Title II of the ADA), 29
 26 U.S.C. section 794(b) (for violations of Section 504 of the Rehabilitation Act of 1973); under
 27 section 52 of the California Civil Code for violation of section 51 of the California Civil Code,
 28 and section 54.3 for violation of sections 54 and 54.1 of the California Civil Code and under

California Code of Civil Procedure 1021.5;

5. Award prejudgment interest pursuant to California Civil Code section 3291; and

6. Grant such other and further relief as this Court may deem just and proper.

**AS TO CLAIMS AGAINST THE SKYPORT DEFENDANTS FOR THE SIXTH AND
SEVENTH CLAIMS AND NINTH CLAIMS**

1. Issue a preliminary and permanent injunction under 42 U.S.C. section 12188 to address violations of Title III of the ADA as pled in the Sixth Claim, under section 52 of the California Civil Code to address violations of section 51 as pled in the Seventh Claim; and under section 55 of the Civil Code to address violations of section 54 *et seq.* of the California Civil Code as pled in the Seventh Claim and directing those of the Skyport Defendants that currently own or operate the Property to eliminate all barriers access at the Property including, without limitation, the sidewalk/walkway barrier that caused Plaintiff's injuries and other surface slope barriers at the Property;

2. Retain jurisdiction over those of the Skyport Defendants that currently own or operate the Property until such time as the Court is satisfied that said Defendants' unlawful policies, practices, acts and omissions, and maintenance of inaccessible subject sidewalk, walkway, and paths of travel as complained of herein no longer occur, and will not recur;

3. Award to Plaintiff all appropriate damages, including but not limited to statutory damages, special damages, and general damages and up to three times her actual damages for each violation of section 51 (per section 52 of the Civil Code) and each violation of section 54 and section 54.1 of the California Civil Code (per section 54.3 of the California Civil Code); provided that Plaintiff shall, before trial, elect as to whether to pursue an award of damages under section 52 or section 54.3 and award Plaintiff all of her general and special damages under per section 14.16.2205 of the San Jose Municipal Code;

4. Award to Plaintiff all reasonable attorneys' fees, litigation expenses and costs of this proceeding, as provided by 42 U.S.C. section 12205 for violations of Title III of the ADA; section 52 of the Civil Code for violation of section 51 of the Civil Code, under section 54.3 of the

California Civil Code for violation of sections 54 and 54.1 of the California Civil Code and under California Code of Civil Procedure 1021.5;

5. Award prejudgment interest pursuant to Civil Code section 3291; and

6. Grant such other and further relief as this Court may deem just and proper.

**AS TO CLAIMS AGAINST ALL DEFENDANTS OTHER THAN THE GOVERNMENT
DEFENDANTS FOR THE EIGHTH CLAIM**

1. For general and special damages pursuant to California Civil Code sections 3281 and 3333, and/or under common law;

2. Award prejudgment interest pursuant to Civil Code section 3291; and

3. Grant such other and further relief as this Court may deem just and proper.

DATED: June 21, 2017

DERBY McGUINNESS & GOLDSMITH LLP

By /s/ Celia McGuinness
Celia McGuinness, Esq.
Attorney for Plaintiff

DEMAND FOR JURY

Plaintiff hereby demands a jury for all claims for which a jury is permitted.

DATED: June 21, 2017

DERBY McGUINNESS & GOLDSMITH LLP

By /s/ Celia McGuinness
Celia McGuinness, Esq.
Attorney for Plaintiff

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

CRISTINA MENDOZA

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

STEVEN L. DERBY, Esq., ANTHONY GOLDSMITH, Esq., CELIA MCGUINNESS, Esq.
DERBY, MCGUINNESS & GOLDSMITH, 200 Lakeside Drive, Suite A, Oakland, CA 94612
Telephone: 510/987-8778; Fax: 510/359-4419

DEFENDANTS

CITY OF SAN JOSE, PACIFIC GAS & ELECTRIC COMPANY, a California registered domestic stock corporation, HUDSON SKYPORT PLAZA, LLC, a Delaware limited liability company, HUDSON SKYPORT PLAZA LAND, LLC, a Delaware limited liability company, HUDSON PACIFIC PROPERTIES, INC., a Maryland corporation, SPIEKER PROPERTIES LP, a California limited partnership, EOP OPERATING LIMITED PARTNERSHIP, LP, a Delaware limited partnership CA - SKYPORT I LIMITED PARTNERSHIP, a Delaware limited partnership; and DOES 1-100, Inclusive, Defendants

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF |
|---|----------------------------|--|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 Incorporated or Principal Place of Business In This State |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 Incorporated and Principal Place of Business In Another State |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 Foreign Nation |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment Of Veteran's Benefits <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC § 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC § 158 <input type="checkbox"/> 423 Withdrawal 28 USC § 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC § 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC § 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities-Employment <input checked="" type="checkbox"/> 446 Amer. w/Disabilities-Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee-Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation-Transfer ☐ 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Americans With Disabilities Act of 1990; 42 USC 12101ff; including 42 USC 12181 et seq
Brief description of cause:
Public facility denying access to physically disabled persons

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S),

IF ANY (See instructions):

JUDGE

DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only)

☐ SAN FRANCISCO/OAKLAND☒ SAN JOSE☐ EUREKA-MCKINLEYVILLE

DATE: 06/21/2017

SIGNATURE OF ATTORNEY OF RECORD: /s/ Celia McGuinness

Case 1:17-cv-03579-SVK Document 1-1 Filed 06/21/17 Entered: 06/21/17 11:11:31 Page 3 of 36
36 of 70

ATTACHMENT 1

United States Bankruptcy Court, Northern District of California

Fill in this information to identify the case (Select only one Debtor per claim form):

- ☐ PG&E Corporation (19-30088)
☒ Pacific Gas and Electric Company (19-30089)

Official Form 410

Debtor Pacific Gas and Electric Company has listed your claim on Schedule E/F, Part 2 as a Contingent, Unliquidated and Disputed General Unsecured claim in an Undetermined amount. You must timely file a proof of claim or be forever barred from recovery.

Proof of Claim

04/16

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 357.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Unless an exception in the Bar Date Order applies to you, you should not use this form to submit a claim that arises out of or relates to the fires that occurred in Northern California prior to January 29, 2019.

Part 1: Identify the Claim

1. Who is the current creditor?
Mendoza, Cristina
Name of the current creditor (the person or entity to be paid for this claim)
Other names the creditor used with the debtor _____
2. Has this claim been acquired from someone else?
☐ No
☐ Yes. From whom? _____
3. Where should notices and payments to the creditor be sent?
Where should notices to the creditor be sent? Cristina Mendoza
c/o Law Office of Robert B. Kopelson
75 E. Santa Clara Street, Suite 1180
San Jose, CA 95113
Where should payments to the creditor be sent? (if different)
Christina Mendoza
c/o Derby, McGuinness, and Goldsmith
300 Lakeside Drive, Suite 1000
Oakland, CA 94612
Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)
Contact phone _____
Contact email _____
4. Does this claim amend one already filed?
☒ No
☐ Yes. Claim number on court claims registry (if known) _____
5. Do you know if anyone else has filed a proof of claim for this claim?
☒ No
☐ Yes. Who made the earlier filing? _____

Filed on MM / DD / YYYY



193008900923755

Part 2:**Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor?

☒ No

☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____

7. How much is the claim?

\$ 3,000,000.00

Does this amount include interest or other charges?

☒ No

☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A)

8. What is the basis of the claim?

Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.

Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c)

Limit disclosing information that is entitled to privacy, such as health care information.

Personal Injury

9. Is all or part of the claim secured?

☒ No

☐ Yes. The claim is secured by a lien on property.

Nature of property:

☐ Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.

☐ Motor vehicle

☐ Other. Describe: _____

Basis for perfection: _____

Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: \$ _____

Amount of the claim that is secured: \$ _____

Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: \$ _____

Annual Interest Rate (when case was filed) _____ %

☐ Fixed

☐ Variable

10. Is this claim based on a lease?

☒ No

☐ Yes. Amount necessary to cure any default as of the date of the petition. \$ _____

11. Is this claim subject to a right of setoff?

☒ No

☐ Yes. Identify the property: _____

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

☒ No

☐ Yes. Check one:

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

☐ Up to \$2,850 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7)

☐ Wages, salaries, or commissions (up to \$12,850) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8)

☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

☐ Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.

Amount entitled to priority

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

* Amounts are subject to adjustment on 4/01/19 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box.

☐ I am the creditor.

☒ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 09/25/2019 (mm/dd/yyyy)

Signature

Print the name of the person who is completing and signing this claim:

Name Robert B. Kopelson

First name Middle name Last name

Title Attorney at Law

Company

Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 75 E. Santa Clara Street, Suite 1180

Number Street

San Jose

CA

95113

City

State

ZIP Code

Contact phone

(408) 293-4000

Email

kopelaw@hotmail.com

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Email: info@dmglawfirm.com

Attorney for Plaintiff
CRISTINA MENDOZA

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

CRISTINA MENDOZA,

Plaintiff,

v.

CITY OF SAN JOSE, PACIFIC GAS &
ELECTRIC COMPANY, a California
registered domestic stock corporation,
HUDSON SKYPORT PLAZA, LLC, a
Delaware limited liability company,
HUDSON SKYPORT PLAZA LAND,
LLC, a Delaware limited liability company,
HUDSON PACIFIC PROPERTIES, INC.,
a Maryland corporation, SPIEKER
PROPERTIES LP, a California limited
partnership, EOP OPERTAING LIMITED
PARTNERSHIP, LP, a Delaware limited
partnership CA – SKYPORT I LIMITED
PARTNERSHIP, a Delaware limited
partnership; and DOES 1-100, Inclusive,
Defendants

Defendants.

CASE NO.

Civil Rights

**COMPLAINT FOR INJUNCTIVE RELIEF
AND DAMAGES**

DEMAND FOR JURY TRIAL

Plaintiff CRISTINA MENDOZA complains of Defendants CITY OF SAN JOSE Hudson Skyport Plaza, LLC, Hudson Skyport Plaza Land, LLC, Hudson Pacific Properties, Inc., Spieker Properties LP, EOP Operating Limited Partnership, CA – Skyport I Limited Partnership, Pacific Gas & Electric Company and DOES 1-100, inclusive, and each of them, and alleges as follows:

INTRODUCTION

1. This case involves the denial of accessible and safe sidewalks, walkways, and paths of travel to Plaintiff CRISTINA MENDOZA (“Plaintiff” or “Ms. Mendoza”), a qualified person with a disability, in connection with a sidewalk and walkways or portions thereof that were designed and/ or constructed and/ or owned and/or operated and/or maintained and/or inspected and/or subject to modifications and alterations by Defendants; as well as Plaintiff having been subjected to and severely injured by hazardous conditions created or allowed to exist by such Defendants. Additionally, Plaintiff is informed and believes and based thereon alleges that other inaccessible conditions, including, but not limited to, excessively sloped routes and pedestrian surfaces and paths of travel, exist at and about the property commonly known as 1650 Technology Drive, San Jose California and developed common areas associated therewith and create a violation of her State and federal civil rights as well as posing a hazard to her and other similarly situated persons.

2. As a result of the inaccessible and hazardous facilities, conditions and elements and other harmful conduct as alleged herein, Plaintiff suffered severe physical personal injuries as well as a denial of her civil rights. At all times herein mentioned, Plaintiff was and is a “person with a disability” or “physically handicapped person,” who is mobility impaired, and unable to safely use portions of walkways, sidewalks and other public facilities that are not fully accessible to physically disabled persons.

3. Plaintiff seeks injunctive relief; recovery of damages for both the personal injuries she incurred and the violation of her civil rights as well as the recovery of reasonable attorney fees, litigation expenses and costs.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction of this action pursuant to: (a) 28 USC § 1331 for violations of the Americans with Disabilities Act of 1990 (hereinafter, the “ADA”), 42 U.S.C. §§ 12101 et seq.; (b) 28 USC § 1343(3) for claims arising under § 504 of the Rehabilitation Act of 1973; and (c) 28 U.S.C. § 1367 for supplemental jurisdiction over attendant and related causes of action arising from the same nucleus of facts and brought under California law, including but not limited to violations of California Civil Code §§ 51, 54, 54.1, violations of California Government Code §§ 815.6, and 835 and common law negligence. This court also has jurisdiction over Plaintiff’s claims for declaratory or injunctive relief pursuant to the ADA, the Rehabilitation Act of 1973, 28 U.S.C. § 2202 and Rule 65 of the Federal Rules of Civil Procedure and State law authorizing injunctive relief.

5. Venue is proper in this court pursuant to 28 USC § 1391(b) because Plaintiff’s claims arose within the Judicial District of the United States District Court of the Northern District of California. This case is properly filed in the San Jose intradistrict as the incident occurred in the City of San Jose, the property at issue is located in the City of San Jose and one or more of the Defendants resides in the City of San Jose.

PARTIES

6. Plaintiff is and at all times relevant to this Complaint was, a “physically disabled person” and a “person with disabilities,” as these terms are used under California law and under federal laws, including but not limited to § 504 of the Rehabilitation Act of 1973 and the ADA. The terms “physically disabled person,” “person with a disability” and a “person with disabilities” will be used interchangeably throughout this Complaint. Ms. Mendoza requires the use of a wheelchair for mobility.

7. Defendant CITY OF SAN JOSE and DOES 1-3 (collectively, the “Government Defendants”) are public entities that on information and belief, at all times relevant to this Complaint designed and/or constructed and/or modified and/or maintained and/or inspected and/or owned, and/or operated and/or exerted control over the design, construction, maintenance,

1 inspection or modification of the sidewalk / walkway area where Plaintiff was injured. At all
 2 relevant times, Defendant PACIFIC GAS & ELECTRIC COMPANY, a California registered
 3 domestic stock corporation (hereinafter, PG&E) and DOES 4-20 are entities that, on information
 4 and belief, at all times relevant to this Complaint, designed and/or constructed and/or modified
 5 and/or maintained and/or inspected and/or owned, and/or operated and/or exerted control over the
 6 design, construction, maintenance, inspection or modification of the sidewalk/walkway area
 7 where Plaintiff was injured or some portion thereof. Defendants HUDSON SKYPORT PLAZA,
 8 LLC, a Delaware limited liability company, HUDSON SKYPORT PLAZA LAND, LLC, a
 9 Delaware limited liability company, HUDSON PACIFIC PROPERTIES, INC., a Maryland
 10 corporation, SPIEKER PROPERTIES, LP, a California limited partnership, EOP OPERTAING
 11 LIMITED PARTNERSHIP, LP, a Delaware limited partnership CA – SKYPORT I LIMITED
 12 PARTNERSHIP, a Delaware limited partnership and DOES 21-50 (collectively, the “Skyport
 13 Defendants”) are on information and belief entities that, at all times relevant to this Complaint,
 14 designed and/or constructed and/or altered and/or modified and currently own and/or operate (or
 15 at relevant times in the past, owned and/or operated) a property used as a place of public
 16 accommodation located in the city of San Jose, California at 1650 Skyport Drive and commonly
 17 known as Skyport Plaza (including ownership and operation of the sidewalk / walkway area
 18 where Plaintiff was injured). The property located at 1650 Skyport Drive in the City of San Jose
 19 (including all walks, sidewalks and paths of travel thereat) shall be referred to herein as the
 20 “Property” or the “Facility.” On information and belief, Defendant DOES 51-65 are or were
 21 agents, contractors, subcontractors or employees of Defendant CITY OF SAN JOSE or other
 22 DOE Defendants; DOES 66-80 are or were agents, contractors, subcontractors or employees of
 23 PG&E or other DOE Defendants; and DOES 80-100 are or were agents, contractors,
 24 subcontractors or employees of one or more of the Skyport Defendants or other DOE Defendants.
 25 On information and belief, Defendants CITY OF SAN JOSE, the Skyport Defendants and DOES
 26 1-3 and 21-50 wrongfully discriminated against Plaintiff on the basis of her disability as part of a
 27 joint venture and common enterprise. Based on information and belief, Plaintiff alleges that all
 28 the named Defendants and DOE Defendants were negligent in connection with the manner in

1 which they designed and/or constructed and/or modified and/or maintained and/or inspected
2 and/or owned, and/or operated and/or exerted control over the design, construction, maintenance,
3 inspection or modification, alteration of the sidewalk / walkway area where Plaintiff was injured.

4 8. Plaintiff does not know the identities of DOES 1-100 at this time and prays leave
5 to substitute the true names of each such Defendant when they have been ascertained.

6 9. Plaintiff does not know the relative responsibilities of the Defendants with respect
7 to the responsibility for the design, construction, modification, alteration, maintenance or
8 inspection of the operation of the programs, services, activities, public accommodations, facilities
9 and elements herein complained of, and alleges a joint venture and common enterprise by
10 Defendants in the ownership and/or operation of each such program, service, activity, public
11 accommodation public accommodations, facilities and elements. Plaintiff is informed and
12 believes that each of the Defendants herein is the agent, servant, employee, representative, joint
13 venturer and/or common enterprise affiliate of each of the other Defendants, and performed all
14 acts and omissions stated herein within the scope of such agency or employment or representative
15 capacity or joint venture or common enterprise and is responsible, in some manner, for the acts
16 and omissions of the other Defendants in proximately causing the damages complained of herein.

17 10. Plaintiff is informed and believes and on that basis alleges that each of the named
18 Defendants and each of the fictitiously named Defendants are legally responsible in some manner
19 for the occurrences herein alleged and that the injuries as alleged herein were caused by the acts
20 and/or omissions of such Defendants. Adherence to the fiction of the separate existence of these
21 certain Defendants as an entity distinct from certain other Defendants would permit an abuse of
22 the corporate privilege and would sanction fraud and/or promote injustice.

23
24 **GOVERNMENT CLAIM FILED**

25 11. Plaintiff made timely claims for damages to Defendant CITY OF SAN JOSE on
26 December 13, 2016. The Defendant CITY OF SAN JOSE rejected Plaintiff's claim effective
27 December 22, 2016.

FACTUAL BASIS FOR COMPLAINT AGAINST ALL DEFENDANTS

12. On the evening of June 16, 2016, Plaintiff had dinner at the Sonoma Chicken Coop restaurant located at the Property. Plaintiff left the restaurant at about 8:30 p.m. from the doors that lead out to the parking lot of the Property. She was accompanied by her roommate. Plaintiff had called for an Uber ride to pick her and her roommate up and take them home. Plaintiff and her roommate decided to head to the corner of Skyport Drive and Technology Drive to meet their ride. They transited the walkway that led from the south door of the restaurant to the main sidewalk/walkway on the east side of Technology Drive. They proceeded north on the sidewalk/walkway. Before reaching the southeast corner of Technology Drive and Skyport Drive, the front wheels of Plaintiff's wheelchair hit a raised portion the south edge of the sidewalk/walkway section immediately north of a utility vault lid or cover. The section of sidewalk/walkway she was on demonstrated concrete chipping and spalling, leaving dangerous gouges/divots such that the sidewalk section just north of and adjacent to the divot/gouge was 1 ½" or higher. The section of sidewalk/ walkways she was on was lower than the adjoining section to the north, particularly on its left side. When Plaintiff's wheelchair wheels struck the higher edge of the sidewalk/walkway, it caused Plaintiff's wheelchair to abruptly stop, which caused her to fall forward out of her wheelchair onto the sidewalk / walkway, fracturing her right femur. The sidewalk/walkway in question was in a patently dangerous condition, as well as exhibiting non-compliance with State and federal disability rights laws, codes and regulations as set forth herein, in the area where Plaintiff was injured. At all relevant times, the Property, including the area of sidewalk/walkway on which Plaintiff was injured, was required to meet the standards of the ADA, including but not limited to the regulations set forth in 28 C.F.R. Part 36 (as to public accommodations) and 28 C.F.R. Part 35 (as to governmental entities). Compliance with the above regulations includes but is not limited to compliance Americans with Disabilities Act Accessibility Guidelines (as the same have been set forth, modified and incorporated into 28 C.F.R. Part 36 and 28 C.F.R. Part 35). In addition, at all relevant times, all construction, modifications, alterations, structural repairs and the like have been governed by the provisions of Title 24-2 of the California Code of Regulations (the "California Building Code"). At all relevant times both federal and State

1 regulations required that accessible routes (including the sidewalk/walkway where Plaintiff was
2 injured, demonstrate compliant slopes and cross slopes and avoid demonstrating abrupt changes
3 in level in excess of ¼" (or ½" if beveled at 2:1).

4 13. There were no signs that warned of the dangerous conditions that caused
5 Plaintiff's injuries, so as to provide Plaintiff, (who was using the subject sidewalk/walkway with
6 due care), adequate time to prepare for and/or avoid the dangerous condition.

7 14. Plaintiff sustained the injuries and loses described herein as a result of the
8 negligence and violation of disabled access and safety standards protecting disabled persons and
9 others by Defendants and their employees and/or agents and/or contractor and/ or subcontractors
10 and the acts and omissions of Defendants and their employees and/or agents and/or contractors
11 and/ or subcontractors were a substantial factor in Plaintiff's injuries and other damages.

12 15. As a result of the aforementioned incident, Plaintiff sustained serious and
13 permanent injuries to her body and mind. Plaintiff has been compelled to incur obligations for,
14 *inter alia* medical care, medicines, medical imaging, hospitalizations, surgeries and related care,
15 and will, in the future, be compelled to incur additional obligations. Plaintiff's income and career
16 as a real estate professional have been impacted by the injuries she sustained and her loss of
17 income continues to accrue and on information and belief, impact her future earning capacity.

18 16. As a result of Defendants' failures to provide a safe and accessible
19 sidewalk/walkway, Plaintiff has, in addition to the injuries and losses described in paragraph 15
20 and elsewhere herein, suffered denial of her civil rights; including the denial to her right to full
21 and equal access to public facilities and public accommodations, and programs services and
22 activities, all to her general, special and statutory damages. Moreover, as a result of her injuries
23 and the inaccessible condition of the Property and sidewalk/walkway, Plaintiff has been deterred
24 from returning to use the Property, sidewalks, walkways, and paths of travel in question and thus
25 suffered a denial of her civil rights that continues to the date of filing this Complaint.

26 17. On information and belief, Plaintiff alleges that at all times herein mentioned,
27 Defendants had actual and/or constructive knowledge of the dangerous conditions and the risk of
28 injury of the type suffered by Plaintiff, with sufficient time to eliminate the defects and dangers in

question and failed to eliminate said defects and dangers. The subject sidewalks, walkways, and paths of travel, and their signing, configuration, and construction, which resulted from negligent, inadequate and/or incomplete property design, construction and/or maintenance, and/or modification or alteration, and/or inspection and/or other unusual conditions, in conjunction with the lack of warnings, given what the Defendants knew or should have known about the conditions of use, constituted a trap for wheelchair users and others traveling on the aforementioned sidewalk/walkway and exposed wheelchair users and others, including Plaintiff, to a significant risk of being injured by the dangerous conditions set forth above. Though the dangerous conditions in question posed a special and unique risk to people who use wheelchairs, the conditions were so hazardous as to pose a danger to any member of the general public.

18. Plaintiff is informed and believes and on that basis alleges, that Defendants owed a duty of care to Plaintiff to design, construct, alter, modify, inspect and maintain the subject property with reasonable care, that Defendants failed to exercise such care and diligence, and that the result of Defendants' breach of their duty of care resulted in Plaintiff's injuries and attendant damages. Additionally, Plaintiff avers that the condition of the sidewalk/walkway on which she was injured was so patently dangerous that Defendants intentionally allowed the condition to exist or that it was allowed to exist because of deliberate indifference on the part of Defendants to the fate of Plaintiff and people similarly situated.

19. Plaintiff is informed and believes that Defendants owned and/or operated and/or designed and/or constructed and/or modified/altered and/or maintained and/or inspected and/or exerted control over the design, construction, maintenance, inspection, modification of the sidewalk/ walkway area where Plaintiff was injured at all times relevant in this Complaint.

CLAIMS AGAINST THE GOVERNMENT DEFENDANTS

FIRST CLAIM

(Against Defendant CITY OF SAN JOSE and DOES 1-3)

**[FOR DISCRIMINATION IN VIOLATION OF TITLE II OF THE AMERICANS WITH
DISABILITIES ACT OF 1990]**

20. Plaintiff repleads and incorporates by reference, as if fully set forth hereafter, the facts and allegations contained in Paragraphs 1 through 19 of this Complaint and incorporates them herein.

21. At all times herein mentioned, Plaintiff was entitled to the protections of the “Public Services” provisions of Title II of the ADA, Subpart A, which prohibits discrimination by any public entity as defined by 42 U.S.C. section 12131. Pursuant to 42 U.S.C. 12132, section 202 of Title II, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the “services, programs or activities” of a public entity, or be subjected to discrimination by such entity. Plaintiff was, at all times relevant herein, a qualified individual with a disability for all purposes under the ADA.

22. In violation of Title II of the ADA, the Government Defendants have failed to ensure that individuals with physical disabilities, such as Plaintiff, are not excluded from the “services, programs and activities” of its public sidewalk, walkway, and pathway system and facilities. By reason of Defendants’ discriminatory policies regarding the failure to provide accessible and useable elements, features and conditions in and to its public sidewalk, walkway, and pathway system, so as to render them “accessible to and useable by” mobility impaired persons, the Government Defendants have intentionally discriminated against Plaintiff in violation of Title II of the ADA and the regulations adopted to implement the ADA: including those regulations governing: (i) the design, construction, modification and alteration of elements, features and facilities in the public right or on or at other public properties; (ii) the inspection and maintenance of said elements, features, facilities or other public properties so that they remain in an accessible and useable condition; and (iii) and the provision of accessible programs, services and activities; all as set forth and mandated in 28 C.F.R. Part 35.

23. On information and belief, to the date of filing of this Complaint, the Government Defendants have failed to make the subject sidewalk/walkway where Plaintiff was injured accessible to and useable by people with disabilities and/or assure that both said Defendants and third parties design, construct, alter, inspect and maintain sidewalks/walkways and features within and connected to sidewalks/walkways (including utility vaults), in a useable and accessible

1 individuals with physical disabilities such as Plaintiff are not excluded from the “services,
 2 programs and activities” of its public sidewalk, walkway, and pathway system and facilities. By
 3 reason of Defendants’ discriminatory policies regarding the failure to provide accessible
 4 elements, features and conditions in and to its public sidewalk, walkway, and pathway system, so
 5 as to render them “accessible to and useable by” mobility impaired persons, Defendants have
 6 intentionally discriminated against Plaintiff in violation of section 504 of the Rehabilitation Act
 7 of 1973, 29 U.S.C. section 794, and the regulations promulgated thereunder: including those
 8 regulations governing: (i) the design, construction, modification and alteration of elements and
 9 facilities in the public right of way or other public properties; (ii) the inspection and maintenance
 10 of said elements and facilities so that they remain in an accessible and useable condition; and (iii)
 11 and the provision of accessible programs, services and activities.

12 28. Plaintiff has a need to, and wishes to return to and use the subject public sidewalk,
 13 walkway, and path of travel programs, services, activities, and facilities complained of herein,
 14 and is deterred from use of these subject public sidewalks, walkways and path of travel programs,
 15 services, activities, and facilities until they are made accessible; particularly with respect to the
 16 conditions where features in or connected to sidewalks and walkways create inaccessible and
 17 hazardous abrupt changes in level.

18 THIRD CLAIM

19 (Against Defendant CITY OF SAN JOSE and DOES 1-3)

20 [FOR VIOLATIONS OF MANDATORY DUTY OF PUBLIC ENTITIES TO PROTECT
 21 AGAINST PARTICULAR KINDS OF INJURIES UNDER CALIFORNIA GOVERNMENT
 22 CODE § 815.6]
 23

24 29. Plaintiff repleads and incorporates by reference, as if fully set forth hereafter, the
 25 facts and allegations contained in Paragraphs 1 through 28 of this Complaint and incorporates
 26 them herein.

27 30. Section 815.6 of the California Government Code provides that, where a public
 28 entity is under a mandatory duty imposed by an enactment that is designed to protect against the

1 risk of a particular kind of injury, the public entity is liable for an injury of that kind proximately
 2 caused by its failure to discharge the duty unless the public entity establishes that it exercised
 3 reasonable diligence to discharge the duty.

4 31. On information and belief, the Government Defendants did not discharge a
 5 number of statutorily mandated duties imposed by federal and State statutes and regulations, as
 6 enumerated herein, all of which were enacted specifically for the purpose of protecting Plaintiff
 7 and other people with disabilities from discrimination and injuries. These duties include those set
 8 forth in the First Claim, above, for violation of the ADA; the Second Claim, above, for violation
 9 of Section 504 of the Rehabilitation Act of 1973; and the Fifth Claim, below, for violations of
 10 sections 51, 54 and 54.1 of the California Civil Code. Each of these laws, statutes and regulations
 11 were designed to prevent the acts of discrimination and injuries, including the physical injuries,
 12 suffered by Plaintiff.

13 32. Discovery has not commenced; investigation is only in its initial stages and is
 14 limited because Defendants have control of access to staff and records and information material
 15 to these claims. After discovery is underway, Plaintiff may learn more about other and additional
 16 mandatory duties that were violated and had a causal effect on the events and damages
 17 complained of herein. Therefore, Plaintiff intends to seek leave to amend this Complaint
 18 accordingly, as may become appropriate, up to the time of trial.

19 33. As set forth herein, Plaintiff is a person with a disability and is in all respects
 20 qualified and able to use public sidewalks, walkways, and paths of travel. The Government
 21 Defendants have (and at all relevant times herein had) a duty to provide safe and accessible paths
 22 of travel on sidewalks, walkways and paths of travel that they own, operate, and maintain or over
 23 which they otherwise exert control or responsibility. Plaintiff is informed and believes and based
 24 thereon alleges that the Government Defendants were/are aware of the discriminatorily
 25 inaccessible and hazardous conditions of subject sidewalk/walkway where Plaintiff was injured.
 26 Plaintiff is informed and believes and based thereon alleges that, despite knowing of these
 27 discriminatorily inaccessible and hazardous conditions, the Government Defendants did not
 28 exercise reasonable diligence or take appropriate steps to eliminate or mitigate these conditions.

37. Plaintiff's injuries, including her physical injuries and denial of her civil rights, could have been prevented if the Government Defendants had discharged affirmative obligations required under statutes and regulations. The occurrences and harm alleged herein are within the scope of concerns, injuries, or harm precisely targeted for prevention by the statutes and regulations cited in this Claim and as set forth in this Complaint.

(Against Defendant CITY OF SAN JOSE and DOES 1-3)

38. Plaintiff repleads and incorporates by reference, as if fully set forth hereafter, the facts and allegations contained in Paragraphs 1 through 37 of this Complaint and incorporates

1 them herein.

2 39. Section 835 of the California Government Code provides that, except as otherwise
3 provided by statute, a public entity is liable for injury caused by a dangerous condition of its
4 property if the plaintiff establishes that the property was in a dangerous condition at the time of
5 the injury, that the injury was proximately caused by the dangerous condition, that the dangerous
6 condition created a reasonably foreseeable risk of the kind of injury which was incurred, and that
7 either: (a) a negligent or wrongful act or omission of an employee of the public entity within the
8 scope of his or her employment created the dangerous condition; or (b) The public entity had
9 actual or constructive notice of the dangerous condition for a sufficient time prior to the injury to
10 have taken measures to protect against the dangerous condition.

11 40. On information and belief, at relevant times set forth in this Complaint, the
12 Government Defendants owned and/or controlled the portion of the sidewalk/walkway where
13 Plaintiff was injured.

14 41. Plaintiff alleges, on information and belief, that the dangerous condition of the
15 sidewalk/walkway where Plaintiff was injured: (a) was created by the negligent or wrongful acts
16 or omissions of one or more employees of one or more of the Government Defendants acting
17 within the course and scope of their employment and/or (b) Defendants City of San Jose and/or
18 DOES 1-3 had notice of the dangerous conditions that injured Plaintiff for a long enough period
19 of time to have corrected said conditions.

20 42. The condition of the sidewalk/walkway on which Plaintiff was injured and the acts
21 or omissions of Defendants (including the acts or omissions of their employees acting within the
22 course and scope of their duties) created a reasonably foreseeable risk that Plaintiff would
23 experience the type of fall and suffer the sorts of injuries alleged herein.

24 43. The violations of the duties enunciated above were the proximate cause of and a
25 substantial factor in causing Plaintiff's injuries, harms, losses, and discrimination set forth in this
26 Complaint for which the Government Defendants, and each of them, are responsible. Plaintiff
27 was, in no way, at fault for the incident wherein she sustained said injuries.

28

FIFTH CLAIM

(Against Defendant City of San Jose and DOES 1-3)

[FOR VIOLATION OF SECTIONS CALIFORNIA CIVIL CODE §§ 51, 54, 54.1 AND
CALIFORNIA GOVERNMENT CODE §§ 4450 et seq.]

44. Plaintiff repleads and incorporate by reference, as if fully set forth hereafter, the allegations contained in Paragraphs 1 through 43 of this Complaint and incorporate them herein.

45. At all times relevant to this Complaint, California Civil Code section 54(a) has provided, in pertinent part, that: “(a) Individuals with disabilities or medical conditions have the same right as the general public to the full and free use of the streets, highways, sidewalks, walkways, public buildings. . . public facilities and other public places.”

46. At all times relevant to this Complaint, California Civil Code section 54.1 has provided that physically disabled persons are not to be discriminated against because of physical handicap or disability in the use of a public accommodation:

. . . [P]hysically disabled persons shall be entitled to full and equal access, as other members of the general public, to accommodations, advantages, facilities and privileges of all common carriers, airplanes, motor vehicles. . . or any other public conveyances or modes of transportation, telephone facilities, hotels, lodging places, places of public accommodation, and amusement or resort, and other places to which the general public is invited, subject only to the conditions or limitations established by law, or state or other federal regulations, and applicable alike to all other persons.

47. At all times relevant to this Complaint, California Civil Code section 51(b) provided, in pertinent part:

(b) All persons within the jurisdiction of this state are free and equal and no matter what their sex, race, color, religion, ancestry, national origin, disability, or medical conditions, are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

48. Plaintiff is informed and believes and therefore alleges that the specified public sidewalk/walkway elements on which she was injured (or related facilities or elements) and the Government Defendants programs, services and activities of operating a sidewalk are and were required to be accessible within the meaning of California Government Code sections 4450 and 4451 *et seq.* Plaintiff is further informed and believes and therefore alleges that the Government

Defendants constructed and/or conducted alterations, structural repairs or additions of the sidewalk/walkway on which Plaintiff was injured or on other property connected therewith, since 1968 within the meaning of Government Code sections 4450 *et seq.*, including section 4456, thereby requiring provision of access to persons with disabilities, as required by law. Additionally, Title 24-2 of the California Code of Regulations requires that facilities and elements that are required to be accessible must be maintained in an accessible condition. Further, Plaintiff alleges that, at all relevant times, the Government Defendants were required to comply with Title II of the ADA, as more fully set forth in the First Claim, above and failed to do so; including, without limitation, failures in: (i) the design, construction, modification and alteration of elements and facilities in the public right of way or other public properties; (ii) the inspection and maintenance of said elements and facilities so that they remain in an accessible and useable condition; and (iii) the provision of accessible programs, services and activities.

49. Plaintiff and other similarly situated people with mobility disabilities, are unable to use sidewalks, walkways, public buildings, public facilities and other public facilities, businesses and public accommodations on a “full and equal” basis unless each such facility is in compliance with the provisions of California Health & Safety Code sections 4450 *et seq.* and the ADA. Plaintiff is a member of that portion of the public whose rights are protected by the provisions of Health & Safety Code sections 4450 *et seq.*

50. On information and belief, the actions and omissions of the Government Defendants, as herein alleged, constitute a denial of access to and use of the described to and use of the described sidewalks, walkways, public buildings, public facilities and other public facilities, businesses and public accommodations by Plaintiff and other similarly situated physically disabled persons within the meaning of Government Code sections 4450 *et seq.* As a result of Defendants’ action and omissions, Defendants have discriminated against Plaintiff in violation of Government Code sections 4450 *et seq.*, and of the regulations adopted to implement section 4450 as set forth in the California Code of Regulations, Title 24-2. A violation of sections 4450 *et seq.* constitutes a violation of general anti-discrimination provisions Civil Code sections 51(b), 54 and 54.1.

51. Each violation of the Americans With Disabilities Act of 1990 (as pled in the First Claim) also constitutes a violation of sections 51(f), 54(c) and 54.1(d) of the California Civil Code, thus independently justifying an award of damages and injunctive relief pursuant to California law. Plaintiff alleges that she has been denied such full and equal access as required by California law which incorporates Title II of the ADA.

52. Each violation of Plaintiff's rights under section 51 of the Civil Code entitles Plaintiff to injunctive relief and an award of damages, attorneys' fees and costs pursuant to § 52 of the Civil Code. Each violation of Plaintiff's rights under §§54 or 54.1 of the Civil Code entitles Plaintiff to an award of damages, attorneys' fees and costs pursuant to §54.3 of the Civil Code.

**CLAIMS AGAINST THE SKYPORT DEFENDANTS RELATING TO THE FAILURE
TO PROVIDE ACCESSIBLE PLACES OF PUBLIC ACCOMMODATION IN
VIOLATION OF FEDERAL AND STATE CIVIL RIGHTS LAWS**

SIXTH CLAIM

(Against Hudson Skyport Plaza, LLC, Hudson Skyport Plaza Land, LLC, Hudson Pacific Properties, Inc., Spieker Properties LP, EOP Operating Limited Partnership, CA – Skyport I Limited Partnership and DOES 21-50)

**[FOR DISCRIMINATION IN VIOLATION OF TITLE III OF THE AMERICANS WITH
DISABILITIES ACT OF 1990]**

53. Plaintiff repleads and incorporates by reference, as if fully set forth hereafter, the facts and allegations contained in Paragraphs 1 through 52 of this Complaint and incorporates them herein.

54. Based on the facts and allegations above (which Plaintiff re-pleads and incorporates herein by reference), Plaintiff was denied full and equal enjoyment of and access to the Skyport Defendants' goods, services, facilities, privileges, advantages or accommodations in violation of the ADA. Plaintiff alleges that the Skyport Defendants owned or own, leased or lease and/or

1 operated or operate a place of public accommodation as the term public accommodation is defined
 2 in 42 U.S.C. section 12181(7). The condition of Skyport Defendants' Facility and/or the manner in
 3 which Skyport Defendants provided services, failed to provide full and equal access to
 4 Defendants' goods and services in public accommodations as required, generally, by the
 5 provisions of 42 U.S.C. section 12182(a) and 42 U.S.C. section 12182(b)(1)(A). As set forth in this
 6 Complaint below, Plaintiff was specifically subjected to discrimination in violation of 42 U. S.C.
 7 sections 12182(b)(2)(A)(iv), 12182(b)(2)(A)(v), 12182 (b)(2)(A)(iii), 12183, and 12188 because
 8 Plaintiff was denied equal access to and enjoyment of the Facility.

9 55. Plaintiff has physical disabilities as alleged above because Plaintiff's conditions
 10 affect one or more of the following body systems: Neurological, musculoskeletal, special sense
 11 organs, and/or cardiovascular. Further, Plaintiff's physical impairments substantially limit major
 12 life activities; including standing and walking. Plaintiff cannot perform the above-noted major life
 13 activities in the manner, speed and duration when compared to the average person. Moreover,
 14 Plaintiff has a history of or has been diagnosed and/or classified as having a physical impairment
 15 as required by 42 U.S.C. section 12102(2)(A).

16 56. One of the specific prohibitions against discrimination under the ADA is set forth
 17 in 42 U.S.C. section 12182(b)(2)(A)(iv). That Section prohibits, in pertinent part: "A failure to
 18 remove architectural barriers, and communication barriers that are structural in nature, in existing
 19 facilities ... where such removal is readily achievable."

20 57. Plaintiff alleges, on information and belief, that the removal of each of the specific
 21 barriers that Plaintiff encountered as set forth above, was at all times, "readily achievable"
 22 pursuant to the factors set forth in the ADA and the applicable Regulations adopted by the United
 23 States Department of Justice under the ADA (said Regulations being set forth in 28 CFR Part 36).
 24 Further, assuming, *arguendo*, that the Skyport Defendants were able to meet their burden of proof
 25 that the removal of the defined architectural barriers (or any of them) was or is not "readily
 26 achievable," the Skyport Defendants have conspicuously failed to make their goods, services,
 27 facilities, privileges, advantages and/or accommodations available through alternative readily
 28 achievable means pursuant to the requirements of 42 U.S.C. section 12182(b)(2)(A)(v).

1 58. The specific prohibitions against discrimination under the ADA, as set forth in 42
2 U.S.C. section 12182(b)(2)(A)(ii) proscribe the following: “A failure to make reasonable
3 modifications in policies, practices and procedures when such modifications are necessary to
4 afford such goods, services, facilities, privileges, advantages or accommodations to individuals
5 with disabilities . . . ”

6 59. Based on the facts and allegations pled herein, the Skyport Defendants failed and
7 refused to reasonably modify their policies, practices and procedures in that they failed to have a
8 scheme, plan or design to assist Plaintiff and/or others similarly situated in enjoying and utilizing
9 Defendants’ services, facilities, privileges, advantages or accommodations, as required by the
10 ADA. Additionally, the Skyport Defendants conspicuously failed to adopt required policies and
11 procedures to allow people with disabilities to effectively and safely navigate the Property.

12 60. Plaintiff is informed and believes and based thereon alleges that the Skyport
13 Defendants designed, built and constructed the Facility on or after January 26, 1993, and modified
14 and altered the Facility on or after January 26, 1992, in a manner that affects the usability and
15 accessibility of the Facility. The ADA specifically prohibits discrimination against persons with
16 disabilities in the construction and alteration of covered public accommodation properties and
17 commercial facilities. In this regard, 42 U.S.C. section 12183(a)(1) states that discrimination
18 includes a failure to design and construct facilities for first occupancy later than January 26, 1993,
19 that are readily accessible to and usable by individuals with disabilities, except where an entity can
20 demonstrate that it is structurally impracticable. In the instant case, Plaintiff is informed and
21 believes and based thereon alleges that the Facility was constructed after January 26, 1993, and
22 that the barrier that caused her physical injuries and /or the other barriers at the Property, were in
23 existence at the time the Facility was constructed.

24 61. As to alterations and modifications of covered public accommodation properties
25 and commercial facilities, the ADA specifically prohibits discrimination caused by failing to
26 design and conduct alterations and modifications in compliance with the Act. On information and
27 belief Plaintiff alleges that the Skyport Defendants, at times relevant to this Complaint, conducted
28 alterations and modifications at the Property that would have required the elimination of the

1 barrier on the sidewalk/walkway that injured Plaintiff and the other surface slope and condition
2 barriers that she has been informed and believes exist at the Facility. In this regard 42 U.S.C.
3 section 12183(a)(2) states:

4 (2) with respect to a facility or part thereof that is altered by, on behalf of, or for
5 the use of an establishment in a manner that affects or could affect the usability of
6 the facility or part thereof, a failure to make alterations in such a manner that, to
7 the maximum extent feasible, the altered portions of the facility are readily
8 accessible to and usable by individuals with disabilities, including individuals who
9 use wheelchairs. Where the entity is undertaking an alteration that affects or could
10 affect usability of or access to an area of the facility containing a primary function,
11 the entity shall also make the alterations in such a manner that, to the maximum
12 extent feasible, the path of travel to the altered area and the bathrooms, telephones,
13 and drinking fountains serving the altered area, are readily accessible to and usable
14 by individuals with disabilities where such alterations to the path of travel or the
15 bathrooms, telephones, and drinking fountains serving the altered area are not
16 disproportionate to the overall alterations in terms of cost and scope (as determined
17 under criteria established by the Attorney General).

12 62. Sections 36.402 and 36.403 of 28 C.F.R. Part 36 contain the regulations called for
13 and referenced in 42 U.S.C. section 12183(a)(2). As enforceable at the time of the incident
14 alleged herein, Section 36.402 of 28 C.F.R. Part 36 states, in pertinent part:

15 (a) General. (1) Any alteration to a place of public accommodation or a
16 commercial facility, after January 26, 1992, shall be made so as to ensure that, to
17 the maximum extent feasible, the altered portions of the facility are readily
18 accessible to and usable by individuals with disabilities, including individuals who
19 use wheelchairs.

20 (2) An alteration is deemed to be undertaken after January 26, 1992, if the
21 physical alteration of the property begins after that date.

22 (b) Alteration. For the purposes of this part, an alteration is a change to a place of
23 public accommodation or a commercial facility that affects or could affect the
24 usability of the building or facility or any part thereof.

25 (1) Alterations include, but are not limited to, remodeling, renovation,
26 rehabilitation, reconstruction, historic restoration, changes or rearrangement in
27 structural parts or elements, and changes or rearrangement in the plan
28 configuration of walls and full-height partitions...

(2) If existing elements, spaces, or common areas are altered, then each
such altered element, space, or area shall comply with the applicable provisions of
appendix A to this part.

24 63. Section 36.403(a) of 28 C.F.R. Part 36 requires additional "path of travel"
25 accessibility work to be conducted in connection with certain alterations. That section, as
26 enforceable at the time of the incidents alleged herein states, in pertinent part:

27 (a) General. An alteration that affects or could affect the usability of or access to
28 an area of a facility that contains a primary function shall be made so as to ensure
that, to the maximum extent feasible, the path of travel to the altered area and the

1 restrooms, telephones, and drinking fountains serving the altered area, are readily
2 accessible to and usable by individuals with disabilities, including individuals who
3 use wheelchairs, unless the cost and scope of such alterations is disproportionate to
4 the cost of the overall alteration.

5 Section 36.403(e) defines a path of travel as follows:

6 (e) Path of Travel.

7 (1) A 'path of travel' includes a continuous, unobstructed way of pedestrian
8 passage by means of which the altered area may be approached, entered, and
9 exited, and which connects the altered area with an exterior approach (including
10 sidewalks, streets, and parking areas), an entrance to the facility, and other parts
11 of the facility.

12 (2) An accessible path of travel may consist of walks and sidewalks, curb ramps
13 and other interior or exterior pedestrian ramps; clear floor paths through lobbies,
14 corridors, rooms, and other improved areas; parking access aisles; elevators and
15 lifts; or a combination of these elements.

16 (3) For the purposes of this part, the term 'path of travel' also includes the
17 restrooms, telephones, and drinking fountains serving the altered area.

18 64. Section 36.403(f), as enforceable as of the time of the incidents alleged herein
19 limits required changes to the path of travel to those changes that are not "disproportionate" to the
20 work being conducted in the area of primary function. Section 36.403(f) states, in pertinent part:
21 "(f) Disproportionality. (1) Alterations made to provide an accessible path of travel to the altered
22 area will be deemed disproportionate to the overall alteration when the cost exceeds 20% of the
23 cost of the alteration to the primary function area."

24 65. In the instant case, Plaintiff is informed and believes and based thereon alleges
25 that the Facility was modified and/or altered after January 26, 1992, and that the barrier that
26 caused her physical injuries and/or the other barriers at the Property were created by or should
27 have been remediated or eliminated in connection with said modifications and alterations.

28 66. Plaintiff has a need to, and wishes to return to and use the subject Facility but is
deterred from doing so; particularly with respect to the conditions where features in or connected
to sidewalks, walkways and paths of travel create inaccessible and hazardous abrupt changes in
level or demonstrate non-compliant slopes and cross slopes.

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SEVENTH CLAIM

(Against Hudson Skyport Plaza, LLC, Hudson Skyport Plaza Land, LLC, Hudson Pacific Properties, Inc., Spieker Properties LP, EOP Operating Limited Partnership, CA – Skyport I Limited Partnership and DOES 21-50)

[FOR VIOLATION OF CALIFORNIA CIVIL CODE §§ 51, 54, 54.1 and CALIFORNIA HEALTH & SAFETY CODE §§ 19953 et seq.]

67. Plaintiff repleads and incorporates by reference, as if fully set forth hereafter, the facts and allegations contained in Paragraphs 1 through 66 of this Complaint and incorporates them herein.

68. At all times relevant to this Complaint, California Civil Code section 54(a) has provided that:

(a) Individuals with disabilities or medical conditions have the same right as the general public to the full and free use of the streets, highways, sidewalks, walkways, public buildings..., public facilities and other public places.

69. At all times relevant to this Complaint, California Civil Code section 54.1 has provided that physically disabled persons are not to be discriminated against because of physical handicap or disability in the use of a public accommodation:

... [P]hysically disabled persons shall be entitled to full and equal access, as other members of the general public, to accommodations, advantages, facilities and privileges of all common carriers, airplanes, motor vehicles... or any other public conveyances or modes of transportation, telephone facilities, hotels, lodging places, places of public accommodation, and amusement or resort, and other places to which the general public is invited, subject only to the conditions or limitations established by law, or state or other federal regulations, and applicable alike to all other persons.

70. At all times relevant to this Complaint, California Civil Code section 51(b) has provided, in pertinent part:

(b) All persons within the jurisdiction of this state are free and equal and no matter what their sex, race, color, religion, ancestry, national origin, disability, or medical conditions, are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

71. Health & Safety Code sections 19955 and 19955.5 were enacted “[t]o ensure that public accommodations or facilities constructed in this state with private funds adhere to the

provisions of Chapter 7 (commencing with Section 4450) of Division 5 of Title 1 of the Government Code.” On information and belief, the provisions of both Health and Safety Code sections 19955 and 19955.5, apply to the Property. Title 24, California Code of Regulations, was in effect at the time of the construction of the Facility and at each alteration, structural repair or modification which, on information and belief, occurred at such Facility, thus requiring access complying with the specifications of Title 24 whenever new construction was undertaken or each such alterations, structural repairs or additions were carried out. On information and belief, the Skyport Defendants designed and constructed the Facility, including but not limited to the sidewalk/walkway on which Plaintiff was injured and/or carried out alterations, structural repairs, or additions to the Facility buildings and other facilities and elements during the period Title 24 has been in effect that would have required them to assure the existence of accessible routes, including the sidewalk/walkway where Plaintiff was injured. Additionally, Title 24 requires that buildings, facilities and elements that are required to be accessible must be maintained in an accessible condition. Further, Plaintiff alleges that, at all relevant times, the Skyport Defendants were required to comply with Title III of the ADA, as more fully set forth in the Sixth Claim, above, and on information and belief, failed to do so, including without limitation: (i) failures in the design, construction, modification and alteration of elements of the Facility; (ii) failure to remove barriers at the Facility to the extent that the same was readily achievable; (iii) failure to adopt a plan or scheme to assure access to people with disabilities; (iv) failure to modify policies practices and procedures to assure access at the Facility; and (v) failure to maintain elements and features required to be accessible in an accessible and useable condition.

72. Plaintiff and other similarly situated physically disabled persons, including those who require the use of a wheelchair, are unable to use sidewalks, walkways, public buildings, public facilities and other public facilities, businesses and public accommodations on a “full and equal” basis unless each such facility is in compliance with the provisions of California Health & Safety Code sections 19953 *et seq.* Plaintiff is a member of that portion of the public whose rights are protected by the provisions of Health & Safety Code sections 19953 *et seq.*

73. The actions and omissions of these Defendants, as herein alleged, constitute a

denial of access to and use of the described sidewalks, walkways, public buildings, public facilities and other public facilities, businesses and public accommodations by Plaintiff and other similarly situated physically disabled persons within the meaning of Government Code sections 19953 *et seq.* As a proximate result of Defendants' action and omissions, Defendants have discriminated against Plaintiff in violation of Government Code sections 19953 *et seq.*, and of regulations set forth in the California Code of Regulations, Title 24-2 adopted to implement section 4450. A violation of these sections and the Title 24-2 regulations adopted thereunder constitutes a violation of the general anti-discrimination provisions Civil Code sections 51(b), 54 and 54.1.

74. Each violation of the Americans With Disabilities Act of 1990 (as pled in the Sixth Cause of Action) also constitutes a violation of sections 51(f), 54(c) and 54.1(d) of the California Civil Code, thus independently justifying an award of damages and injunctive relief pursuant to California law. Plaintiff alleges that she has been denied such full and equal access as required by California law which incorporates Title III of the ADA.

75. Each violation of Plaintiff's rights under section 51 of the Civil Code entitles Plaintiff to injunctive relief and an award of damages, attorneys' fees and costs pursuant to section 52 of the Civil Code. Each violation of Plaintiff's rights under sections 54 or 54.1 of the Civil Code entitles Plaintiff to an award of damages, attorneys' fees and costs pursuant to section 54.3 of the Civil Code.

EIGHTH CLAIM

(Against Defendants Pacific Gas & Electric Company, Hudson Skyport Plaza, LLC, Hudson Skyport Plaza Land, LLC, Hudson Pacific Properties, Inc., Spieker Properties LP, EOP Operating Limited Partnership, CA – Skyport I Limited Partnership and DOES 4-100)

[NEGLIGENCE AND NEGLIGENCE PER SE]

76. Plaintiff repleads and incorporates by reference, as if fully set forth hereafter, the facts and allegations contained in Paragraphs 1 through 75 of this Complaint and incorporates them herein.

1 77. At all times herein mentioned the Property where the subject incident that forms the
2 basis of this lawsuit occurred created and/or was in a dangerous condition due to the negligence
3 and other breaches of duty owed to Plaintiff by Defendants.

4 78. As a proximate result of the dangerous conditions, Plaintiff sustained serious and
5 permanent injuries and attendant damages as set forth herein.

6 79. The known dangerous conditions, as described above, created a substantial risk of
7 the type of injury alleged herein when the Property was used with due care in a manner in which it
8 was reasonably foreseeable that such Property would be used.

9 80. At all times relevant to this Complaint, on information and belief, Defendants, and
10 each of them, owned, operated, maintained, controlled, designed, constructed, altered, modified,
11 equipped, supervised, and administered the area which is the subject of this Complaint, such that
12 they were in some manner substantially responsible for property design, construction,
13 maintenance, repair, inspection, monitoring, and signing, and/or other work that was conducted in
14 the subject area or in the area surrounding the place where the Plaintiff was injured.

15 81. Defendants, and each of them, through their acts and omissions, created the
16 dangerous conditions and/or failed to remedy the dangerous conditions and/or failed to warn of the
17 dangerous conditions.

18 82. Defendants, and each of them, had the authority and the funds and other means
19 available to take alternative action that would not have created the dangerous conditions.

20 83. Defendants, and each of them, had the authority and the responsibility to take
21 adequate measures to protect against the dangerous conditions that caused Plaintiff's injuries.

22 84. Although these Defendants had actual and/or constructive knowledge of the
23 dangerous conditions of the Property they failed to warn the public of the dangerous conditions.

24 85. Prior to or on or about the date of Plaintiff's injury, these Defendants, their
25 employees, contractors, subcontractors and agents, and each of them, acting within the scope of
26 their employment, were negligent and careless in doing the acts set forth above, which negligence
27 created the dangerous conditions as described herein.

28 86. These Defendants, and each of them, were further negligent in that they failed to

87. Defendants, their employees, contractors, subcontractors and agents, and each of them, had actual and/or constructive knowledge of the existence of the dangerous condition(s) and knew or should have known of their dangerous character in that the condition had existed for a sufficient period of time, and was of such a nature that Defendants, in the exercise of due care should have discovered the conditions and their dangerous character within a sufficient period of time prior to the occurrence of the accident to have taken measures to protect against the dangerous conditions.

89. As a result of such negligence, Plaintiff has sustained damages.

91. Plaintiff in no way contributed nor was she in any way at fault for any of the injuries she sustained and the negligence of defendants as alleged herein above was a substantial factor in Plaintiff's fall and injury.

ATTACHMENT 1

1 designed to provide for safe and accessible conditions for people with disabilities or the general
2 public the negligence of said Defendants constitutes negligence *per se*.

3 93. To the extent that any of the negligent acts or omissions alleged herein were the
4 result of the negligence of any Defendant's employees acting in the course and scope of their
5 employment, said Defendants are liable for the acts or omissions of said employees under the
6 principles of *respondent superior*.

7 **NINTH CLAIM**

8 **(Against Hudson Skyport Plaza, LLC, Hudson Skyport Plaza Land, LLC, Hudson**
9 **Pacific Properties, Inc., Spieker Properties LP, EOP Operating Limited Partnership, CA –**
10 **Skyport I Limited Partnership and DOES 21-50)**

11 [FOR VIOLATION OF SAN JOSE MUNICIAPAL CODE SECTION 14.16.2200]

12 94. Plaintiff repleads and incorporates by reference, as if fully set forth hereafter, the
13 facts and allegations contained in Paragraphs 1 through 93 of this Complaint and incorporates
14 them herein.

15 95. At all times relevant to this Complaint, Subsection B of section 14.16.2200 of the
16 San Jose Municipal Code has stated:

17 B. The owners of lots or portions of lots adjacent to or fronting on any portion of
18 a sidewalk area between the property line of the lots and the street line, including
19 parking strips, sidewalks, curbs and gutters, and persons in possession of such lots
20 by virtue of any permit or right shall repair and maintain such sidewalk areas and
21 pay the costs and expenses therefore, including a charge for the city of Jose's
22 costs of inspection and administration whenever the city awards a contract for
such maintenance and repair and including the costs of collection of assessments
for the costs of maintenance and repair under subsection A of this section or
handling of any lien places on the property due to failure of the property owner to
promptly pay such assessments.

23 96. At all times relevant to this Complaint, Subsection C of section 14.16.2200 of the
24 San Jose Municipal Code has stated:

25 C. For the purposes of this part, maintenance and repair of sidewalk area shall
26 include, but not be limited to, maintenance and repair of surfaces including
27 grinding, removal and replacement of sidewalks, repair and maintenance of curb
28 and gutters, removal and filling or replacement of parking strips, removal of
weeds and/or debris, supervision and maintenance of signs allowed pursuant to
Section 23.04.340 and Section 23.04.830, tree root pruning and installing root
barriers, trimming of shrubs and/or ground cover and trimming shrubs within the

1 area between the property line of the adjacent property and the street pavement
2 line, including parking strips and curbs, so that the sidewalk area will remain in a
3 condition that is not dangerous to property or persons using the sidewalk in a
reasonable manner and will be in a condition which will not interfere with the
public convenience in the use of said sidewalk area.

4 97. At all times relevant to this Complaint, Section 14.16.2205 of the San Jose
5 Municipal Code has stated:

6 14.16.2205 Liability for injury to public. The property owner required by Section
7 14.16.2200 to maintain and repair the sidewalk area shall owe a duty to members
8 of the public to maintain the sidewalk area in a safe and nondangerous condition.
9 If, as a result of any property owner to maintain the sidewalk area in a
nondangerous condition as required by Section 14.16.2200, any person suffers
injury or damage to person or property, the property owner shall be liable to such
person for the resulting damages or injury.

10 98. At all times relevant to this Complaint, one or more of the Skyport Defendants
11 owns and/or owned the Property and was required to maintain the sidewalk/walkway where the
12 Plaintiff was injured in a safe and nondangerous condition. The failure of the Skyport Defendants
13 to discharge this duty resulted in the injuries to Plaintiff set forth herein and said defendants are
14 therefore liable for Plaintiff's injuries per section 14.16.2205 of the San Jose Municipal Code.

15
16 WHEREFORE, Plaintiff prays that this Court:

17 **PRAYER FOR RELIEF**

18 **AS TO CLAIMS AGAINST THE GOVERNMENT DEFENDANTS FOR THE FIRST,**
19 **SECOND, THIRD, FOURTH AND FIFTH CLAIMS**

20 1. Issue a preliminary and permanent injunction (under 42 U.S.C. 12133 to address
21 violations of Title II of the ADA as pled in the First Claim, and under 29 U.S.C. 794(a) to
22 address violations of section 504 of the Rehabilitation Act of 1973 as pled in the Second Claim)
23 directing that the Government Defendants -- as current owners and operators of the subject public
24 sidewalk, walkway, and path of travel programs, services, activities, and facilities -- modify the
25 above-described subject public sidewalk, walkway, and path of travel programs, services,
26 activities, and facilities so that Plaintiff and similarly situated persons with disabilities may obtain
27 the benefits of, and access to these programs, services and activities in a "full and equal" manner;
28 and to maintain each such subject public sidewalk, walkway, and path of travel program, service,

activity and facility in an accessible and non-hazardous condition; and to continue to maintain adequate subject public sidewalks, walkways, and path of travel programs, services, activities, and facilities for use by disabled persons so long as any such public sidewalks, walkways, and path of travel programs, services, activities, and facilities are maintained for the use of able-bodied persons. Particularly, Plaintiff seeks an injunction that would require said Defendants to provide sidewalk and walkway features that do not contain inaccessible abrupt changes of level in excess of ¼” and to establish protocols for the inspection of sidewalks and walkways that would detect and eliminate said barriers;

2. Retain jurisdiction over the Government Defendants until such time as the Court is satisfied that said Defendants’ unlawful policies, practices, acts and omissions, and maintenance of inaccessible subject public sidewalk, walkway, and path of travel programs, services, activities, and facilities as complained of herein no longer occur, and will not recur;

3. Award to Plaintiff all appropriate damages, including but not limited to statutory damages, special damages, general damages in an amount within the jurisdiction of the Court, according to proof under: (1) 42 U.S.C. section 12133, (for violation of Title II of the ADA, as set forth in the First Claim); (2) 29 U.S.C. section 794(a) (for violation of Section 504 of the Rehabilitation Act of 1973 as set forth in the Second Claim); (3) for breach of duties under sections 815.6 and 835 of the California Government Code (as set forth in the Third and Fourth Claims, respectively). Additionally, Plaintiff seeks up to three times her actual damages for each violation of section 51 of the California Civil Code (per section 52 of the California Civil Code) and each violation of sections 54 and 54.1 of the California Civil Code (per section 54.3 of the California Civil Code); provided that Plaintiff shall, before trial, elect as to whether to pursue an award of damages under section 52 or section 54.3;

4. Award Plaintiff all reasonable attorneys’ fees, litigation expenses and costs of this proceeding, as provided by 42 U.S.C. section 12133 (for violations of Title II of the ADA), 29 U.S.C. section 794(b) (for violations of Section 504 of the Rehabilitation Act of 1973); under section 52 of the California Civil Code for violation of section 51 of the California Civil Code, and section 54.3 for violation of sections 54 and 54.1 of the California Civil Code and under

California Code of Civil Procedure 1021.5;

5. Award prejudgment interest pursuant to California Civil Code section 3291; and

6. Grant such other and further relief as this Court may deem just and proper.

**AS TO CLAIMS AGAINST THE SKYPORT DEFENDANTS FOR THE SIXTH AND
SEVENTH CLAIMS AND NINTH CLAIMS**

1. Issue a preliminary and permanent injunction under 42 U.S.C. section 12188 to address violations of Title III of the ADA as pled in the Sixth Claim, under section 52 of the California Civil Code to address violations of section 51 as pled in the Seventh Claim; and under section 55 of the Civil Code to address violations of section 54 *et seq.* of the California Civil Code as pled in the Seventh Claim and directing those of the Skyport Defendants that currently own or operate the Property to eliminate all barriers access at the Property including, without limitation, the sidewalk/walkway barrier that caused Plaintiff's injuries and other surface slope barriers at the Property;

2. Retain jurisdiction over those of the Skyport Defendants that currently own or operate the Property until such time as the Court is satisfied that said Defendants' unlawful policies, practices, acts and omissions, and maintenance of inaccessible subject sidewalk, walkway, and paths of travel as complained of herein no longer occur, and will not recur;

3. Award to Plaintiff all appropriate damages, including but not limited to statutory damages, special damages, and general damages and up to three times her actual damages for each violation of section 51 (per section 52 of the Civil Code) and each violation of section 54 and section 54.1 of the California Civil Code (per section 54.3 of the California Civil Code); provided that Plaintiff shall, before trial, elect as to whether to pursue an award of damages under section 52 or section 54.3 and award Plaintiff all of her general and special damages under per section 14.16.2205 of the San Jose Municipal Code;

4. Award to Plaintiff all reasonable attorneys' fees, litigation expenses and costs of this proceeding, as provided by 42 U.S.C. section 12205 for violations of Title III of the ADA; section 52 of the Civil Code for violation of section 51 of the Civil Code, under section 54.3 of the

California Civil Code for violation of sections 54 and 54.1 of the California Civil Code and under California Code of Civil Procedure 1021.5;

5. Award prejudgment interest pursuant to Civil Code section 3291; and

6. Grant such other and further relief as this Court may deem just and proper.

**AS TO CLAIMS AGAINST ALL DEFENDANTS OTHER THAN THE GOVERNMENT
DEFENDANTS FOR THE EIGHTH CLAIM**

1. For general and special damages pursuant to California Civil Code sections 3281 and 3333, and/or under common law;

2. Award prejudgment interest pursuant to Civil Code section 3291; and

3. Grant such other and further relief as this Court may deem just and proper.

DATED: June 21, 2017

DERBY McGUINNESS & GOLDSMITH LLP

By /s/ Celia McGuinness
Celia McGuinness, Esq.
Attorney for Plaintiff

DEMAND FOR JURY

Plaintiff hereby demands a jury for all claims for which a jury is permitted.

DATED: June 21, 2017

DERBY McGUINNESS & GOLDSMITH LLP

By /s/ Celia McGuinness
Celia McGuinness, Esq.
Attorney for Plaintiff